Central Law Journal.

ST. LOUIS, MO., DECEMBER 18, 1903.

PENSIONING SCHOOL TEACHERS.

A tendency of the times, which cannot be looked upon otherwise than as a most worthy and commendable one, is the granting of pensions not only to the defenders of the government on the battlefield but to those, also, who labor long and hard to win for the nation the victories of peace and civilization. In this latter class, no servant of the people does any more for the nation's progress and welfare than the school teacher; nor is any other public servant more justly entitled to an annuity after long service. Certain states have made various attempts to do justice to the great body of school teachers in this respect, with more or less success. It might be interesting, probably, to note the progress of these efforts.

In New York they passed a law which authorizes the submission to the electors of a town of the question whether they will make provisions by taxation "for a sum of money sufficient to pay such teachers, residents of such town, who have been employed in the common schools thereof for not less than twenty-five years," a pension. This law was construed and much restricted in the case of People v. Haughran, 55 N. Y. (App. Div.) 118. In this case it was held that this law did not empower a town to adopt a rule applicable to all teachers who should subsequently attain twenty-five years of service, but whenever such a proposition was voted upon, it only included such teachers who came within the provisions of the law at the time the vote was taken. After reaching this conclusion the court said: "Under this construction, the taxpayers would be able to form some estimate of the extent to which their town would be burdened by the vote asked for. And they may from time to time, upon further petition, vote such a sum as the then condition of affairs would seem to require. But I am of the opinion that it is not the intent of the statute to permit one vote taken upon one petition to place an unknown burden upon all coming generations."

In Ohio, they passed a law to create a school teachers' pension fund, in cities of a certain class, and making it the duty of the proper officers of the board of education to deduct one per cent. of the salaries paid to all teachers, and pay the same into the city treasury to the credit of the "school teachers' fund." A recent circuit court decision of that state, in an interesting opinion, holds the law unconstitutional, first, because it is not of uniform operation throughout the state, since it applies only to such towns as have at that time a certain population, and makes no provision for other towns subsequently to enter the same class; second, because a law which imposes the burden of taxation upon teachers as a class of citizens even for the purpose of a teachers' pension fund, is not taxing by a uniform rule. Therefore, the act constitutes a taking of private property without due process of law. The court argued that a deduction of the money from a teacher's salary was not a deduction from a public fund, on the theory that teachers receive so much less salary, and cannot be sustained on that ground. "A teacher's salary," says the court, "is his own property and he has the constitutional right to use it for his own benefit or for the benefit of others, as he may see fit." State v. Hubbard, 12 Ohio Cir. Dec. 87.

In Minnesota they adopted still another plan. The board of education of the city of Minneapolis adopted certain rules and regulations which provided that one per cent. of the salaries of all teachers employed by the board should be deducted and paid into a fund for the purpose of providing annuities for teachers becoming incapacitated by reason of long service. When teachers were employed by the board they were required to enter into a contract consenting that such percentage of their salaries should be diverted by the board of education for the purpose of establishing such fund. The supreme court of that state, in construing that law, held that the act of the board in providing for and exacting by contract such a percentage of salaries was not authorized by law, and was void. State v. Rogers (Minn. 1902), 91 N. W. Rep. 430. The court said: "If a scheme or plan had been adopted among the teachers themselves whereby they voluntarily surrendered a certain proportion of their salaries for the purpose of providing an annuity fund and the members of the board

had volunteered to assist in perfecting and carrying out such a plan, then clearly there would be no ground upon which the city could interfere, and we do not undertake to say that the furtherance of such a scheme some part of the salaries might not be assigned by the teachers and paid directly into the proper fund out of the city treasury. But we are not dealing with such a condition. Here the board of education are not acting voluntarily, as individual members, but they have acted and are acting as a board, claiming to be clothed with authority under the law to exact from the teachers employed a certain percentage of their compensation. * * * We do not wish to intimate that the care of those who have given their life work to a cause of such benefit to the public may not to some extent be provided for when the limit of activity is reached, and the fund for that purpose be raised by taxation. It certainly conduces to the welfare of the school system to make it profitable and attractive for persons to devote themselves to the work, and, if it would attract to the service a better class of teachers, is not such an object for the benefit and welfare of the school system? Conceding, therefore, that the legislature might grant the power, within proper limits, to provide a fund for such a purpose, it is very clear that it has not been done. The legislature has never attempted to deal with the subject, and no board of education had ever endeavored to put it in use. There is no reason for assuming that the legislature contemplated any such object, and there is certainly nothing within the language employed to intimate that such unusual and extraordinary power was intended to be implied."

We have entered thus exhaustively into this question because of its novelty and for the further reason that attorneys will more and more frequently be called upon to advise concerning schemes of pensioning public officers. Several rules are deducible from the authorities which we have considered. First: Public officers as a class may be pensioned, if the good of the public service demands it. We, however, doubt the correctness of the construction that is put by the Supreme Court of New York on the act of that state, that one member of a certain class can be pensioned while others in the same class or who subsequently come into that class are not entitled to the same privilege. If public moneys are to be used at all for such purposes, they should be expended without favoritism, or the reason that sustains the whole scheme will fail, *i. e.*, that it be for the public good. It certainly would not benefit the school system, for instance, for the teachers to understand that certain ones, at the pleasure of the school board or any other determinate body, would receive a pension on completing a certain term of service, while others who were equally worthy and who had met all the conditions would be denied. Taxation to promote such a scheme would be clearly unconstitutional, as serving no public purpose. Second: The fund out of which such pensions are to be paid must be raised by general and uniform methods of taxation; the state has no right to tax the teachers direct for such a purpose, neither has a board of education or school committee a right to insert in the teacher's contract of employment, an agreement to remit a certain proportion of his salary to create such a fund. The state has no right to compel parties to protect themselves against untoward conditions later in life; if it seems for the good of the public service that certain classes of public servants should be thus protected, it is the duty of the state to supply the means, and, if necessary, to raise the money with which to create a special fund for that purpose, by the ordinary methods of taxation.

NOTES OF IMPORTANT DECISIONS.

PHYSICIANS AND SURGEONS—APPROPRIATION BY PHYSICIAN OF ANTI-TOXIN FURNISHED TO THE POOR.—Quite a number of cities and counties have been for several years distributing free of charge, to poor people, a drug known as "anti-toxin," which is used as a preventive against and cure for diphtheria. This drug is sent to certain druggists in the city, and the latter are authorized, upon the presentation of a certificate by any physician in the city, to deliver, free of charge, for the use of a poor patient, one or more phials of the drug.

The opportunity which this system furnishes dishonest practitioners to increase their revenue at the expense of the city is one which such practitioners are not slow to take advantage of.

In a recent case a New York physician administered to the child of a woman he knew to be able to pay for it, antitoxin delivered to him free

of charge by the city, for the treatment of a poor patient for whom payment would be a hardship, and then charged the woman for the same and accepted payment. The defendant was convicted of petit larcency for appropriating to his own use public property in his control. People v. Lavin, 83 N. Y. S. 630. In its argument the court said:

"The defendant was the agent of the city to administer the antitoxin to Martha Horner free of charge if she was unable to pay for it, and he was the agent of the city to administer that antitoxin only in that event; but he administered it to her knowing that she was able to pay for it, and therefore, in so administering the antitoxin contrary to the conditions upon which it was delivered to him, and contrary to the conditions under which he was authorized to administer it, he deviated from the terms of his agency, and did so to his own pecuniary advantage. In other words, the defendant, by administering this antitoxin, delivered to him for the purpose of being used on a patient unable to pay for the same, when he knew that the patient was able to pay for the same, and by accepting payment for the same, appropriated the antitoxin to his own use, and rendered himself amenable to subdivison 2 of section 528 of the Penal Code of the state of New York."

BOARD OF TRADE—PROPERTY RIGHT IN STOCK QUOTATIONS.—The Board of Trade, of Chicago, has made repeated efforts to prevent the giving out of its stock quotations to other companies. These efforts were terminated adversely to it by the circuit court of appeals for the eighth circuit in the case of Christie Grain & Stock Co. v. Board of Trade of the City of Chicago, 125 Fed. Rep. 161. The conclusion of the court is that the board of trade is not entitled to invoke the aid of a court of equity to protect its claimed property right in the quotations made on the transactions of its exchange in view of the fact that the proof shows that at least 85 per cent. of these transactions are made on "margins" or deals in which it is not intended to make a future delivery of the article nominally dealt in, but which are to be settled by the payment of money only according to the fluctuations of the market, and also that for a specified price it furnishes such quotations to telegraph companies and others for distribution as a means of encouraging speculation in futures, and for the purpose of bringing such business to the members of its exchange.

Shiras, J., in writing the opinion of the court said: "It is authoritatively settled by decisions of the Illinois supreme court, which the learned judge previously discussed, that, under the statutes of the state of Illinois, it is unlawful for any person or corporation to keep or furnish an office or place wherein persons may, under the pretense of buying or selling grain or other produce, engage in speculating in futures and in gambling upon the rise or fall of the market, and every person and corporation is prohibited from communicating or receiving any statement or quotation of prices with a view to aiding in the carrying on of the prohibited gambling transactions.

Of the nature of the business carried on by the members of the board of trade there can be no question under the evidence submitted in this case. The testimony of the president of the board, William S. Warren, and of a large number of the members of the board was taken for the purpose of showing the character of the transactions had upon the floor of the exchange hall; and there is absolute unanimity in their evidence to the effect that much the larger part of these transactions were deals wherein it was not expected or understood that there would be any delivery of the article nominally dealt in, but the same were carried through and settled by methods clearly devised to avoid the need of actual delivery. The estimates of the witnesses vary as to the percentage of the transactions in which actual delivery was contemplated or had, running from 1 to 15 per cent, thus proving that at least 85 and more probably 95 per cent. of the transactions would come under the condemnation of the Illinois statute. We do not deem it necessary to set forth the details of this testimony, which can be found in the opinion of Judge Thompson in the case of The Board of Trade of the City of Chicago v. O'Dell Commission Co. 115 Fed. Rep. 574. In that case, and in Board of Trade v. Donovan Commission Co., 121 Fed. Rep. 1012, upon consideration of substantially the same evidence submitted in this case, the conclusion was reached that over 90 per cent. of the transactions had on the floor of the exchange hall maintained by the Chicago board of trade were purely gambling transactions. The evidence clearly establishes the fact that the Chicago board of trade maintains in its exchange hall a place wherein transactions coming within the inhibition of the statute are permitted and carried on, and the preparation and sending out of the continuous quotations of prices, based upon these forbidden transactions, are intended to aid its members, as well as outsiders, in engaging in speculative gambling on the rise and fall of the market, and therefore, in both these particulars the board of trade violates the plain provisions of the statute."

CONSTITUTIONAL LAW — CONSTITUTIONALITY OF IOWA LAW RELATING TO INSURANCE COMPANIES.—Iowa has a law which makes it unlawful for two or more insurance companies doing business in the state to enter into combinations or agreements relating to the rates to be charged for insurance, or agreements as to the amount of commissions to be allowed agents, or other agreements as to the manner of transacting fire insurance business of the state. The federal court in a recent case holds this law unconstitutional and void, in that they deprive persons carrying on a certain line of business of liberty to

contract, which is secured to all persons by the fourteenth amendment to the federal constitution, and also of the equal protection of the laws. Greenwich Insurance Co. v. Carroll, 125 Fed. Rep. 121.

In sustaining its decision the court said:

"All laws of a general nature shall have a uniform operation. These laws in question do have a uniform operation. No one can expect that all laws shall operate upon all people. We have laws with reference to the legislature, and those laws operate upon that body alone. So as to the office of the auditor, and a score of other offices, state, county, and municipal. And it is the same as to private affairs. Railroad companies are held liable for an injury to an employee brought about by the negligence of a fellow servant. Such legislation, as all know, is valid. Hundreds of statutes have been enacted in this state known by all to be intended to apply in each case to a single city or town, corporation or trade. That they are valid but few doubt. Statutes were enacted many years ago applying to bridges across the Mississippi river when there was but one bridge, and now there are but few. No one doubts their validity. Years ago statutes were passed authorizing the sale of a railroad to one at the state line, to thereby make a connecting line. But few, if any, ever doubted their validity. Illustrations will readily occur by which I could multiply these cases. And so it is as to granting immunities to some which are denied to others. Exempting farmers, merchants, manufacturers, mining companies, and other corporations from liability in case an employee is injured by another employee's negligence, and holding a railroad liable, well illustrates the whole proposition.

Classifications can be made, providing they are not arbitrarily made. If the Iowa statute provided that a railroad company were liable, in the case above stated, where an employee was injured in building a bridge, cutting timber, or at work in the shops, all the courts would have held the law invalid. But the legislature provided for a recovery only when the injury occurred in the hazards arising from the use and operation of the road. If these statutes in question are otherwise valid, then it is not an arbitrary classification, because they apply to a business peculiar in itself.

All will agree that there must be rules and regulations applicable to insurance companies not applicable to other corporations. There must be some officer, with the powers of an insurance commissioner, to govern and direct and control them. The Iowa supreme court has upheld so many statutes in principle like this that the question now being discussed seems very clear to me. The following statutes have been held valid: (1) Innumerable curative and legalizing acts; (2) statutes making railway companies liable for double damages for stock killed; (3) allowing a defendant a continuance, as of course, when in the military service; (4) classifying railroads as to charges for carrying freights and passengers; (5) taxes need not operate upon all persons alike; (6) taxing railroads by one set of officers, and individuals by another; (7) exempting property from water taxes; (8) taxing foreign insurance companies on their business; (9) exempting certain property from municipal taxes, and compelling others to pay such taxes; (10) taxing transient merchants; (11) assessing stock of state bank differently from that of a national bank; (12) a special law authorizing the building of a particular railroad. No doubt there are others that have been upheld. Counsel for complainant seem to have forgotten that special legislation in all cases is not prohibited. Special legislation is prohibited as to six enumerated subjects: (1) Assessment and collection of taxes; (2) for laying out highways; (3) for changing the names of persons; (4) for incorporating cities and towns; (5) for vacating roads, streets, and town plats; (6) for locating or changing county seats. But as no one of the above referred to provisions of the constitution is applicable to this case, it is necessary to see what other special legislation is prohibited. The constitution then recites: 'In all cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state.' It is too apparent to admit of discussion that there are hundreds of subjects upon which the state, through its legislature, should speak: 'Where a general law cannot be made applicable, and where it cannot be of uniform operation throughout the state.' And insurance is one of these subjects. In my judgment, the statutes in question are not prohibited by either of the state constitutional provisions."

DESCENTS AND DISTRIBUTION—WHETHER THE RULE OF ADVANCEMENT APPLIES TO COLLATERAL KIN.—Does a gift made to a collateral relative, such as brother or nephew, constitute an advancement which such relative will be required to bring into hotchpot in order to share in the partition of the estate of the giver. This has been a question unsettled by any direct authority, until the recent case of Waldron v. Taylor, 45 S. E. Rep. 336, which definitely holds that the true notion of advancement is giving by anticipation, the whole or a part of what it is supposed a child will be entitled to on the death of the parent making it and dying intestate. And the court further held that the doctrine of hotchpot is designed by the statute to benefit descendants only; advancements are not to be brought into distribution or partition in respect to any other persons.

The defendants in this case argued that the modern use of the word descendant includes within its meaning a sister or even a father or uncle who inherits the estate, these being known as statutory descendants. But the majority of the court would not stand for such a loose defini-

tion of an important legal term and held that the word "descendant," as used in the statute, meant one who proceeded from the body of another, however, remotely, and is co-extensive with "issue," but does not embrace others not of issue. But there is no need to cite, as the court does in this case, such a long list of authorities to sustain such a well recognized definition.

But the question whether the rule as to advancements includes collateral heirs, has, as before stated, not been settled, heretofore, by direct authority. In its opinion in the principal case the court said: "The term 'advancement' is thus defined: An advancement is a transfer of property from a person standing *in loco parentis* towards another to that other in anticipation of the share of the donor's estate, which the donee would receive in the event of the donor's dying intestate.' Citing Cawthon v. Coppedge, 1 Swan. 487; Rickenbacker v. Zimmerman, 10 S. C. 110, 30 Am. Rep. 31. And in Clark v. Willson, 27 Md. 693, Weisel, J., said: 'An advancement is a giving by anticipation the whole or part of what it is supposed a child will be entitled to on the death of the parent making it and dying intestate.' And in Brightly's Eq. § 389, it is said that an advancement is 'a pure and irrevocable gift by a parent in his lifetime to his child on account of such child's share of the estate after the parent's decease.' This was quoted with approval in Miller's Appeal, 31 Pa. 337; Yundt's Appeal, 13 Pa. 575, 53 Am. Dec. 496; Greene v. Brown (Ind. Sup.), 38 N. E. Rep. 519; Dillman v. Cox, 23 Ind. 440. 'An advancement differs from a gift, inasmuch as it is charged against the child; and from a debt, in that there is no enforceable liability on the part of the child to repay during the lifetime of the donor, or after his death, except in the way of suffering a deduction from his portion in the estate. Unlike an ademption, it has to do with intestate estate only.' 1 Am. & E. Enc. of Law, 761, and cases there cited. Prof. Miner, in his Institutes, volume 2, at p. 513 (4th Ed.), says: 'An advancement is a gift by a parent to a child or descendant for the purpose of advancing him in life.' And on page 514, the same writer says: "The doctrine of hotchpot is founded upon the idea of equality in the division amongst descendants of the ancestral property, unless the ancestor shall himself by will duly executed think fit to make a difference. When, therefore, he makes to one of them a gift of a nature to advance him in life in pursuance of the policy in question, it ought *prima facie* to be presumed to have been so intended; and that, while the circumstances and the declarations of the donor accompanying the gift may well be adduced to repel or confirm such presumption, yet that no subsequent declaration from him should be allowed any effect, nor, indeed, to be admitted in evidence at all.' And further, at page 517, he says: 'As the doctrine of hotchpot is designed by the tatute to benefit descendants only, advancements are not to be brought into distribution or partition in respect to any other persons.'"

Brannon, J., in his dissenting opinion, give probably all that can be said on the other side of this proposition. After admitting that the weight of authorities seemed to restrict the rule to children or issue, he said: "In Harley v. Harley, 57 Md. 342, the opinion gives the word 'advancement' a broader sense, saying that 'in legal contemplation an advancement is simply giving by anticipation the whole or part of what it is supposed the child or party advanced would be entitled to receive on the death of the party making the advancement.' The word 'party' is used. Thornton on Gifts and Advancements, § 539, reads: 'The donor must stand in such blood relation to the donee that the latter inherits a part of the former's estate if he were to die intestate.' 'The doctrine of advancement has been extended to cover transactions between uncle and nephew, aunt and niece, and older and younger brothers.' 1 Am. & Eng. Ency. Law, 775. * * * * The purpose of the law of advancements is to attain equality among heirs. Should we not give that word 'descendant' found in the descent statute a construction to secure such equality? This can only be done by making it include both lineal and collateral heirs. The other construction inflicts enormous inequality and injustice. It would make the son account for every dollar of advancement, but would allow a brother to keep his advancement in his pocket, and not account for it to his brothers, and yet share equally with them in the estate."

CAN A MARRIED WOMAN—A WOMAN UNDER COVERTURE—ACQUIRE THE TITLE TO LAND BY DISSEIZIN AND ADVERSE POSSESSION — BY DISSEIZIN AND THE RUNNING OF THE STATUTE OF LIMITATIONS?

In the case of Sawyer v. Kendall,[1] Mr. Justice Bigelow, in the course of the opinion, on page 245, answers the question which heads this article, in the negative. He says, quoting the sentence entire: "His wife could commit no act of disseizin, till her coverture ceased by his death." In Frink v. Alsip,[2] the court in the course of the opinion on page 105 say: "The defense of the statute of limitations relied upon by Mrs. Alsip cannot avail her in this action. It is not pretended that her husband at any time occupied the premises in hostility to the title of Frink; and during her coverture she could not, for herself, being a *feme covert* occupy

[1] 10 Cush. 241.
[2] 49 Cal. 103.

in hostility to the title of Frink. This view disposes of the defense of the statute of limitation interposed by Mrs Alsip in this action, because, supposing that she occupied adversely to the title of the plaintiff ever since she became discovert, this action was brought within five years after that event." And the Supreme Court of California later, in the case of the Bank v. Concepcion de la Guerra, the wife of Francisco de la Guerra,[3] on p. 111, say: "The plaintiffs are entitled to recover possession of the premises in controversy * * * unless the adverse possession, which the court below found she has held of the premises, constitutes a bar to such recovery. But it is evident this finding cannot avail her. * * * There is no pretense that her husband claimed adversely to any one; and she could not claim adversely to him or to those holding under him so long as he remained the head of the family which he did until his death."

The doctrine upon which the above decision is grounded is found in the common law relation of husband and wife. No state in the union has so far enlarged the rights and powers of a married woman as to allow her to commit an act of disseizin, the initial step necessary to set the statute of limitations to running in her favor; no state has made it lawful for a married woman to do that which was wrongful at the common law. In the enlargement of her rights and powers the legislatures of the several states have been particular to confine themselves to matters that have been looked upon as natural rights. They have given and secured to her the sole ownership and the sole right to use and control, her personal property, as well as the control, use and benefit of her real property, but have nowhere so enlarged her power to acquire real property, as to enable her to do the first wrong act essential to the acquirement thereof by adverse possession. In order to acquire title to lands by adverse possession, open, notorious, continuous and exclusive, under claim of ownership, the first entry thereinto must have been an unlawful, a wrongful entry, against the right of the true owner. While we may not be familiar with the term larceny of lands, the person who makes an entry into the lands of another with the intent to acquire the title thereto, claiming ownership thereof only for the purpose of setting the statute of limitations to running in his favor, having no color of title thereto which he believes to be good for anything, and knowing that he has no just claim or right to the land, is as much a thief as he who takes his neighbor's horse from his stable and runs it off and sells it as his own. The initial step therefore to the acquirement of land by adverse possession and the running of the statute of limitations is a wrongful step. Bouvier, vol. 1, p. 484, defines disseizin as "a privation of seizin, a usurpation of the right of seizin and possession, and an exercise of such powers and privileges of ownership as to keep out or displace him to whom these rightfully belong. It takes the seizin or estate from one man and places it in another. It is an ouster of the rightful owner from the seizin or estate in the land and the commencement of a new estate in the wrongdoer." And on page 485 "a disseizor is one who puts another out of his lands wrongfully." In the case of Towle v. Ayer,[4] on page 60, it is said that "every disseizin is a trespass, but it is not every trespass which amounts to an actual disseizin. A disseizin is a continued trespass under claim of title." "To constitute an actual disseizin there must be an entry with intent to usurp the possession and to oust another of his freehold. There is then an actual disseizin whenever one man wrongfully enters upon the land of another with intent to usurp the possession, and, retaining the possession, actually turns the owner out, or at least keeps him out."

In the case of Smith v. Burtis,[5] Mr. Chancellor Kent who delivered the opinion of the court among other things said: "Whatever may be the meaning of disseizin in other cases, its meaning when applied to the subject before us embraces a tortious ouster. There must be a disseizin in fact. The rightful owner must have been expelled either by violence or by some act which the law regards as equivalent in its effects." And on page 217: "A mere entry upon another is no disseizin, unless it be accompanied with expulsion or ouster from the freehold. Disseizin is an ouster gained by wrong and injury; and therein it differs from dispossession which may be by right or wrong. This is the uniform language of the

[3] 61 Cal. 109.

[4] 8 N. H. 57.

[5] 6 Johns. (N. Y.) 216.

best authorities from the time of Littleton." In Washburn on Real Property,[6] the author says: "In analyzing the requisites of such a possession as will give title it requires in order to constitute an actual possession that there should be an entry made, so that there may be an ouster effected and an adverse possession begun; that is he who would set up such a title must go upon the land as his own; and it is only from the time of making such an entry that the statute of limitations begins to run in favor of him who claims under it." On page 139, before this, Mr. Washburn says: "To constitute an actual disseizin there must not only be an unlawful entry upon lands but it must be made with an intention to dispossess the owner, as the act otherwise would be a mere trespass. * * * Disseizin, like trespass, is a tortious act, adverse in its nature and in derogation of the right of the true owner." The foregoing quotations support the statement before made that to acquire title to land by adverse possession or the running of the statute of limitations the first step essential is that of an unlawful entry thereinto. Can a married woman, a woman under coverture, take that initial step? If not, what is the reason.

Blackstone says, vol. 1, page 441, that "by the marriage the husband and wife are one person in law; that is the very being or legal existence of the woman is suspended during the marriage, or at least incorporated and consolidated into that of the husband, under whose wing, protection and cover she performs every thing, and is therefore, in our law french a *feme covert*, *foemina viro co-operta;* it is said to be covert baron, under the protection and influence of her husband, her baron or lord; and her condition during her marriage is called her coverture." In vol. 4, page 28, after discussing the obligations of the civil subjection, whereby the inferior is constrained by the superior to act contrary to what his own reason and inclination would suggest, he goes on to say: "As to persons in private relations, the principal case where constant restraint of a superior is allowed as an excuse for criminal misconduct is with regard to the matrimonial subjection of the wife to her husband; for neither a son nor a servant are excused for the commission of any crime, whether capital or otherwise by the command or coercion of the parent or master, though in some cases the command or authority of the husband, either express or implied, will privilege the wife from punishment, even for a capital offense. And therefore, if a woman commit theft, burglary or other civil offenses against the laws of society, by the coercion of her husband, or even in his company, which the law construes a coercion, she is not guilty of any crime, being considered as acting by compulsion and not of her own will."

And Mr. Chancellor Kent, in his Commentaries, vol. 2, page 129, says: "The legal effects of marriage are generally deducible from the principle of the common law by which the husband and wife are regarded as one person, and her legal existence and authority, in a degree, lost or suspended during the continuance of the matrimonial union." And on page 149, he further says: "The husband is liable for the torts and frauds of the wife, committed during coverture. If committed in his company, or by his order, he alone is liable. If not, they are jointly liable, and the wife must be joined in the suit with her husband. Where the remedy for the tort is only damages by suit or fine, the husband is liable with the wife; but if the remedy be sought by imprisonment on execution, the husband alone is liable to imprisonment. The wife during coverture cannot be taken on a *capias ad satisfaciendum* for the debt *dum sola* or a tort *dum sola* without her husband; and if he escapes or is not taken, the court will not let her lie in prison alone."

In the case of Stenger Benevolent Association v. Stenger,[7] Mr. Chief Justice Harrison, beginning near the top of page 433, has said that "the confidential relation recognized as arising with the marital tie and its continued existence with that of the bond of marriage are still in force and accorded recognition. That relations of trust and confidence do arise and exist between the husband and wife with and during the continuance of marriage and that the husband will be, or is,—with possibly a few notable exceptions' (women of the Carrie Nation stamp) —'the dominant personage therein, are matters of common knowledge and must be admitted; and it is of the inherent qualities of such relations

[6] Vol. 3, p. 149.

[7] 54 Neb. 427.

that no legislature by its enactments and no rule of law however established could, as a matter fact, change them, nor do we think it has been attempted. It will not be presumed that the legislature had the intent to combat or set aside such stubborn and well known principles of human life and conduct." At the Middlesex (Massachusetts) term of the supreme judicial court, when the case of Sawyer v. Kendall,[8] was argued, there sat with Mr. Associate Justice George T. Bigelow, who wrote the opinion in that case, Mr. Chief Justice Lemuel Shaw and Associate Justices Theron Metcalf and Caleb Cushing; and there was no dissenting voice. And September 7, 1860, Mr. Justice Bigelow was appointed Chief Justice to succeed Lemuel Shaw who had resigned August 21, previous. Mr. Bigelow was Chief Justice until December 31, 1867, when he resigned.

In the case of Little v. Gardner and Wife[9] the question was raised whether the action could be maintained against the wife, and the court said: "It has been objected in this case, that a writ of entry cannot be maintained against a husband and wife, because a wife cannot be a disseizeress. But this is a mistake. A married woman may disseize another without the assent of her husband, and the husband will be liable to an action with his wife for such disseizin. Perkins, sec. 46. But a married woman can in general disseize only by her own actual entry. Co. Litt. 180*b*, note 4." The above reference to Coke on Littleton, 180*b*, note 4, is found in vol. 3, ch. 3 (note 56) sec. 277-283, and reads as follows: "But infants and *femes covert* are exceptions to this rule, for commandment before or agreement after is not sufficient to make them disseizors, but it must be by their actual entry, or their own proper act."

And Blackstone too makes an exception to the rule laid down, that "if a married woman commits theft, burglary or other civil offenses against the laws of society by the coercion of her husband, or even in his company, which the law construes coercion, she is not guilty of any crime, being considered as acting by compulsion and not of her own will;" for he says that "in all cases where the wife offends alone, without the company or coercion of her husband, she is responsible for her offenses as much as any *feme sole*." Such would undoubtedly be the case where the husband was absent, — living beyond the realm,—where the husband and wife, though not divorced, were living separate and apart from each other, and proof were made of such fact, and would apply also to the act of disseizin. This New Hampshire case, therefore, not only does not conflict with the doctrine laid down in the Massachusetts and the California cases, but, rightly considered, confirms the same.

JOSEPH H. BLAIR.

Omaha, Neb.

[8] 10 Cush. 241.
[9] 5 N. H. 415.

LOTTERIES — NICKEL-IN-THE-SLOT MACHINES.

JOHNSON v. STATE.

Supreme Court of Alabama, June 11, 1903.

Defendant operated a machine with a wheel which revolved around a stationary arrow, on the disk or outer rim of which were divided colors of different shades, the separate colors representing different values. At the top of the machine were four separate slots, where persons desiring to play the machine deposited a nickel. Thereafter the person was required to state the color they played and turn the wheel, and if, when the wheel stopped, the arrow pointed at the color the person played, he won, and received whatever the color was valued at, but, if the wheel stopped with the arrow pointed at another color, the person playing received nothing. Held, that such wheel so played constituted a hazard to win money, to be determined by the use of a contrivance of chance, in which neither choice nor skill exerted any effect, and was, therefore, a prohibited lottery.

In a prosecution for maintaining a lottery, where the device maintained was clearly within the definition of a lottery, a license issued by the probate judge to defendant to maintain the same was inadmissible, since it was not within the power of the legislature to authorize the licensing of a lottery.

McClellan, C. J., dissenting.

The witness for the state testified that the defendant was the proprietor and owner of a saloon in the town of Fayette, Ala.; that he had been in the defendant's place of business frequently before the finding of the indictment in this case, and had played on the machine owned by the defendant and kept on the counter of his bar and had seen others play on said machine. The machine was described by said witness substantially as follows: It was a machine with a wheel on the side, which revolved around a stationary arrow. On the disk or outer rim of said revolving wheel there were separate and divided colors of different shades. These separate colors represented different values. One color represented 10 cents, one 25 cents, one 50 cents, and one $1 These colors were black, red, yellow, etc. At the

top of the machine are four seperate slots or places where those who wish to play the machine are required to deposit a nickel or five cents. After depositing the nickel in the slot or place provided therefor, the person playing the machine was required to state on which color they played. After so stating, they would give the wheel with the colors marked on it a whirl or turn, and if, when the wheel stopped, the stationary arrow pointed to the color the person playing the wheel had chosen, then said person won whatever that color was valued at, and received the money accordingly. If, when the wheel stopped, the arrow was not pointing to the color chosen by the person playing the machine, he lost, and received nothing. The witness further testified that he had seen persons win and lose on the machine, and had lost and won in playing it himself. On the cross-examination of this witness he was asked whether or not the machine was openly exhibited on the counter in the defendant's place of business. The state objected to this question on the ground that it called for illegal, irrelevant and immaterial evidence. The court sustained the objection, and to this ruling of the court the defendant duly excepted. The defendant then asked said witness several questions as to whether or not he had ever heard the defendant solicit people to play on the machine, or had ever known of the town authorities asking or requesting the defendant to stop operating said machine. To each of said questions the state objected. The court sustained such objections, and to each of such rulings the defendant separately excepted. The defendant, as a witness in his own behalf, testified that he had operated such a machine as was described by the state's witness. The defendant, as a witness in his own behalf, was asked whether or not he had a license issued to him by the judge of probate permitting him to operate said machine. The state objected to this question. The court sustained its objection, and the defendant duly excepted. The defendant offered to introduce in evidence the license which he had procured for operating said machine. The state objected to the introduction of said license. The court sustained the objection, and the defendant duly excepted. The court, at the request of the state, gave to the jury the following written charge: "If the jury believe the evidence in this case beyond a reasonable doubt, they will find the defendant guilty as charged in the first count of the indictment."

DOWDELL, J.: The indictment in this case contained three counts. The first charged that the defendant "set up or was concerned in setting up or carrying on a lottery;" the second count charged that the defendant "set up or carried on, or was concerned in setting up or carrying on, a device for a lottery, or sold or was interested in selling tickets or shares in a lottery;" and the third count charged that the defendant "set up or carried on or operated a lottery, to-wit, a slot machine," etc. Before entering upon the trial, the court, on motion of the solicitor, entered a *nol. pros.* as to the second and third counts against the objection of the defendant. This action of the court was permissible, and the objection of the defendant was wholly without merit. The case was then tried on the first count, resulting in a verdict and judgment of guilty. The controlling question in the case is whether the machine described in the evidence, with the uses to which it was put, falls within the definition of a lottery, the carrying on of which is denounced both by our constitution and statutes. In Loiseau v State, 114 Ala. 38, 22 So. Rep. 139, 62 Am. St. Rep. 84, it was said by this court: "'Lot' has been correctly defined to be 'a contrivance to determine a question by chance, or without the action of man's choice or will.' To be a criminal lottery, there must be a consideration, and when small amounts are hazarded to gain large amounts, and the result of winning to be determined by the use of a contrivance of chance, in which neither choice nor skill can exert any effect, it is gambling by lot, or a prohibited lottery." Under the undisputed facts before us as to the device used and the manner of its use, every element essential to constitute a prohibited lottery within the above definition is present. It is wholly immaterial by what name the device is designated or called, if the essential elements of a lottery be present in the uses to which it is put, it falls under the prohibition of the law against lotteries. The case of Reeves v. State, 105 Ala. 120, 17 So. Rep. 104, bears a striking analogy to the case at bar. There is no difference in principle, and on the facts we think that case is conclusive on the question here.

We do not think there is any conflict between the act approved February 13, 1897 (Acts 1896-97, p. 901), which may be found in the margin on page 287 of the criminal code, and section 4808 of the criminal code. There is a field of operation for both statutes. A slot machine, denounced by the act of February 13, may be so used as to be wanting in some of the elements of a lottery, and still fall within the prohibition of that act. It was no doubt the purpose of the legislature in the enactment of this statute to prohibit the games of chance therein designated, when the same might be so carried on as to fall within the definition of a lottery, and still possess some element of gambling.

Further quoting from Loiseau v. State, 114 Ala. 38, 22 So. Rep. 139, 62 Am. St. Rep. 84, it was said: "The legislature has no authority to authorize the licensing of slot machines to be used as the evidence shows it was used in the present case. We would not be understood as deciding that a slot machine is necessarily one of lot within the prohibition of the law; nor do we hold that a wheel of fortune carries with it the legal import of a lottery. Whether it is so or not depends upon the use to which it is put in the particular case. Whatever may be the name or character of the machine or scheme, if in its use

a consideration is paid. and there is gambling, the hazarding of small amounts to win larger, the result of winning or losing to be determined by chance. in which neither the will nor skill of man can operate to influence the result. it is a determination by 'lot,' within the comprehensive word 'lottery,' used in the constitution of this state." The device here, though called a "slot machine," and the manner of its use as shown by the evidence, falling clearly within the definition of a lottery, the court committed no error in sustaining the objection of the state to the introduction in evidence of the license, since it is not within the power of the legislature to authorize the licensing of a lottery. Nor do we find that the court committed any error in other rulings on the admission and rejection of evidence.

No error being shown by the record, the judgment of the circuit court will be affirmed.

McCLELLAN, C. J., dissenting.

NOTE.—*Slot Machines as Lotteries.*— A slot machine is a lottery if the element of chance is likely to deny the party "playing" the machine any reasonable or adequate return for the amount expended. The general rule is: To constitute a criminal lottery there must be a consideration, and where small amounts are hazarded to gain large amounts, and the result of winning or losing is determined by chance, in which neither choice nor skill can operate to influence the result, there is gambling by lot; and the operation of the contrivance or machine used to determine the winning or losing, constitutes a lottery prohibited by the laws of the state. Loiseau v. State, 114 Ala. 34, 62 Am. St. Rep. 84. Since the slot machine is the latest form of gaming device we shall confine our attention to cases treating of that particular form of lottery.

The case of Prendergast v. State, 41 Tex. Cr. Rep. 358, 57 S. W. Rep. 850, was a trial for establishing a lottery, where the evidence was shown that the lottery was operated by a slot machine, and there was no controversy as to the essential portions of the testimony which made the device a lottery and conclusively showed that it was a lottery. The court held that it was not error for the court in its charges to assume and instruct the jury that a slot machine was a lottery. The court said: "Appellant complains that the court instructed the jury that a slot machine was a lottery, on the ground that this was taking a question of fact from the consideration of the jury. This question resolves itself into the proposition as to what the proof showed. The evidence establishes these facts without controversy: That the alleged lottery was operated by means of a slot machine, which was about five feet high; that on the inside thereof was certain machinery, so constructed as to make it work automatically; that there were five slots of different colors; that if you put a nickel into the slot of either red or black color, and, in falling out the machine it happened to touch a certain spring, it would set the machinery in motion, open a certain valve, and pay out a dime into a little pocket, which was the winning. And so of the other colors. If the nickel did not happen to touch the right spring to make it pay, it would not pay anything. Of course, the person depositing the nickel in one of the slots would not always win, and whether such person won or lost, would depend upon the internal mechanism and appliances inside of the machine, and whether in falling it would touch a certain groove or spring, or something else that would open the valve below and let the nickels out. The witness says there was no keeper or exhibitor presiding over it, in charge of the machine; it was automatic, and did all its own work. The witness would not say to whom the money went that was lost; that Prendergast (appellant) owned the saloon where the machine was kept. It was further shown that he allowed it to be placed in his saloon, and he was there every day and saw it in operation, and allowed it to be used there, and in the manner described. This statement, according to our understanding of the definition, constitutes a lottery, that is, a game of hazard or chance, in which small sums are ventured for the chance of obtaining a larger sum of money."

In the case of City of New Orleans v. Collins, 52 La. Ann. 973, it was held that the use of a slot machine, where an element of chance determines whether the prizes are to be given, brings such operation under the definition of a lottery, whether the prizes given are stock in trade of licensed establishments or not.

In the case of Kolshorn v. State, 97 Ga. 343, it appeared from the evidence that the accused kept and maintained a machine so contrived, that if one dropped a nickel in a slot therein he would either lose the nickel or win fifteen cents, and that the object and purpose of the accused in keeping and maintaining the machine was to win money in this manner. The court held that the accused was guilty of keeping and carrying on a device for the hazarding of money. The court further held that such a machine could not lawfully be treated as one kept "for amusement only."

The case of Loiseau v. State, 114 Ala. 34, 62 Am. St. Rep. 84, is sufficiently discussed in the principal case.

JETSAM AND FLOTSAM.

JUDGE HUSTON ON COMPULSORY ARBITRATION.

Judge Thad Huston, of Tacoma, insists that labor unions go too far when they demand compulsory arbitration. The judge addressed the Oregon Bar Association on this subject several days ago, and put his ideas in very plain language.

"Whenever the time comes," said he, "that disputes between men are to be submitted to compulsory arbitration, we go outside of the law and the constitution and our liberties are at an end.

One monopoly must be sustained and that is the monopoly of the courts in the interpretation of law and the administration of justice.

It thrilled me with admiration for our American judiciary when I read the other day that a Pennsylvania court had refused to recognize as binding on any one the terms of the practically enforced arbitration of the anthracite coal strike in that state.

"In these latter days of aggregation of capital and organization of labor, novel questions are daily arising, but however men may do in their affairs, in the last analysis, their relations to each other will be adjusted, and the adjustment will be enforced, by the courts of the land in accord with settled principles of law and justice. These principles are grown into our civilization."

CORRESPONDENCE.

STATUTORY RESTRAINTS ON THE MARRIAGE OF DIVORCED PERSONS IN THE DISTRICT OF COLUMBIA.

To the Editor of the Central Law Journal:

I note in the article "Statutory Restraints on the Marriage of Divorced Persons," by H. J. Whitmore, Esq., Lincoln, Nebraska, in the issue of December 4, 1903, the author states in the third paragraph that the District of Columbia, among others, has "no restriction whatever upon the subsequent marriage of either party to an action for divorce."

Permit me to correct your correspondent by quoting the following section of the District Code: "Section 966. Causes for divorce *a vinculo* and for divorce *a mensa et thoro*. A divorce from the bond of marriage may be granted only where one of the parties has committed adultery during the marriage: Provided, that in such case the innocent party only may remarry, but nothing herein contained shall prevent the remarriage of the divorced parties to each other: And provided, that legal separation from bed and board may be granted for drunkenness, cruelty, or desertion: And provided, that marriage contracts may be declared void in the the following cases," etc.

This error is due, no doubt, to lack of familiarity on his part with the laws in effect here, which is a state of affairs I find to be very general throughout the country.

I am yours respectfully,

Washington, D. C. JOHN E. TAYLOR.

JOINT AND SEVERAL LIABILITY OF MASTER AND SERVANT AS AFFECTING THE REMOVAL OF CAUSES.

To the Editor of the Central Law Journal:

Your letter of the 17th, enclosing me bill for No. 21, Vol. 54, CENTRAL LAW JOURNAL, containing article on joint and several liability of the master and servant for negligence, as affecting the removal of causes, received. Thanks.

The leanings of the author are apparent, but the foundations for his conclusions are obscure. It barely touches the real question in the last paragraph where he says: "If the declaration or *complaint shows* that *the servant is a proper party*, the state court has a right to retain jurisdiction of the case," etc. In other words, *the complaint must state a cause of action against the servant*, and if it does so, then the state court has a right to retain jurisdiction. But if the complaint does *not state a cause of action*, then it follows logically that the action is *neither joint nor several*. And there being no cause of action against the servant, why should the master, the real and only defendant, be prevented from removing the cause? If the law is to be built of such matter, then I do not see why we may not begin building sky-scrapers with sun-dried bricks made of mud and straw. The legal edifice is certainly no more staple than the earthen one. If removal can be prevented by *joining a servant who is not liable* under the allegations of the petition, and if trumpery like this can be gravely paraded as the latest and richest fruit of our highest courts, what has become of our ancient boast that "the law is the fruit of the best reason?" It is ridiculous to say that certain actions are *not joint*, but that they are not removable because they are not *also severable*, when on the face of the petition *no cause of action is stated* except as against the master.

Very truly,

F. HOUSTON.

Kansas City, Mo.

[We forwarded this letter to Mr. Cyrus J. Wood, the author of the article referred to, and received the following reply. ED]

To the Editor of the Central Law Journal:

Your favor of recent date containing a letter addressed to you by Attorney Franklin Houston of Kansas City was duly received, and Mr. Houston's letter was read with interest. He refers therein to an article entitled, "Joint or Several Liability of Master and Servant for Negligence as Affecting Removal of Causes." 54 Cent. L. J. 404. The doctrine advocated in the article is, we trust, plain, no matter how inadequately it may have been discussed. The statement is made that while the authorities are in conflict, the weight of authority seems to be with the Warax Case (Warax v. Railway Co., 72 Fed. Rep. 637, opinion by Taft, circuit judge), and the Dixon Case (C. & O. Ry. v. Dixon, 179 U. S. 131, 21 Sup. Ct. Rep. 67, opinion by Mr. Chief Justice Fuller) wherein it is held that an action against a master and one or more servants charging them with concurrent negligence is joint and not several, and, therefore, cannot be removed into a federal court by the master, whether an individual or a corporation, on the ground of diverse citizenship, when the servant or one of the servants is a citizen of the same state as the plaintiff. The logic and reasoning of these decisions, in my mind, are unanswerable, and these decisions are the basis of the article.

The doctrine is upheld in other recent cases, viz.: Central Ohio R. Co. v. Mahoney, 114 Fed. Rep. 732, and Riser v. Southern Ry. Co., 116 Fed. Rep. 215. There is a recent case, Helms v. Missouri Pac. Ry. (1903), 120 Fed. Rep. 389, opinion by Amidon, district judge, which furnishes comfort to Mr. Houston as it is held therein that where the cause of action in a complaint against a railroad company and one of its employees is based solely on the alleged negligence of the employee, no concurrent negligence of the company being charged, the cause is removable by the company as it involved a separable controversy, the requisite diversity of citizenship and the amount involved being shown. In this opinion, the learned judge makes the following statement: "The master is, in fact, negligent only when he participates in the wrongful act of his employee." With the decision in the case, inasmuch as the declaration or complaint of the plaintiff failed to show concurrent negligence, exception cannot be taken, but the reasoning upon which the decision is based and of which the statement just quoted is a part, is, in my mind fallacious in the extreme.

It is ridiculous to argue in a case where, for instance, a passenger is killed or severely injured, owing to the fact that a switch was negligently left open by a switchman and a signal was not noticed by an engineer, that the negligence of the railroad company which was running and operating the train was not joint with that of its servants. The railroad company, a corporation, must be liable for the negligence of its servants, as it acts only through those servants, and it is preposterous, illogical and unreasonable to argue that the corporation, because it is a creature of the law and cannot handle a throttle or pull a switch, is not liable jointly with the men who do this work while in its employ. It hires the men and tells them what to do. But this question has been discussed in the cases above cited and those which were cited in the article to which reference has been made.

Mr. Houston and I have each of us a right to differ in our opinions on this question, and this brings

mind a story. There was once a well-known Chicago trial lawyer who was before a well-known Chicago judge, and the lawyer was arguing at great length a motion for a new trial and he read from volume after volume. The lawyer and the judge were intimate friends when the judge was not on the bench. After the lawyer had continued his reading of authorities for half an hour or so, the judge, who, strange to say, was somewhat petulent and irascible said, with characteristic emphasis, "Now Mister So and So, what is the sense of your reading that stuff here by the hour. It is not the law and never was the law and never will be the law." The lawyer, who was astonished but not disconcerted, leisurely replied, "If your honor please, I may not think this is the law and you may not think it is the law, but it may be the law, all the same."

Respectfully yours,
CYRUS J. WOOD.

Chicago, Ill.

HUMOR OF THE LAW.

Judge—"I will give you just one hour to get out of town."

Tramp—"Well, if I'm brought back here for overspeeding me auto, don't blame me, jedge!"

Judge Givan, formerly circuit judge in Missouri, relates this incident of a trial he had before a justice of the peace in his early practice.

After the evidence was in Mr. Givan told the court he wanted "to read the law" which governed the case and then proceeded to read from the statutes. After he was through, a young attorney for the defendant, named Williams, addressed the court as follows: "If your Honor please, what the gentleman has read from has no application whatever to this case; what he has read may do very well for a court of law, but it has no application to a court of justice. Why, your Honor, this court is, as its very name implies a court of justice and not of law." With this he sat down. The argument was conclusive.

A western lawyer had defended a prisoner charged with murder, with the result that the man was convicted and hanged. Shortly afterwards the same lawyer appeared before the judge with a fee bill for defending the man and attending to matters in probate closing up his estate. The bill was for a large sum, and the lawyer explained it in detail.

"Well, I'll approve it," announced the judge, "but it does seem to me as if you could have killed that man for less."

"Are you acquainted with the defendant?"

"Very slightly, sah."

"You know him by sight?"

"Not exactly, sah."

"What do you mean by that?"

"I mean dat de night was so dark, sah, dat I couldn't distinguish de gemman's features on de only occasium when we encountered, sah."

"And when did you encounter?"

"At de door of de chicken coop, sah, jest as he wuz comin' out."

One of the twelve attorneys who argued the recent Tillman murder trial in South Carolina, followed a lawyer of state-wide reputation as an orator, and the position was a difficult one. The lawyer made this explanatory prefece:

"I am reminded of a good Sunday school teacher I once heard with her class. She was a good woman and she had a crowd of little boys as her scholars, and one Sunday she brought some pictures to show them, and she showed them the picture of Christ; she showed them a picture of Mary, the mother of Christ, and then she showed them a picture of the devil. This picture represented the devil having great, glaring eyes, fire coming out of his mouth, and great horns. The teacher said, 'Now, boys, how would you like a thing like that to get hold of you?' All of them looked scared, and one little fellow said 'Well, I wouldn't like it.' Another little fellow, on the back seat, said, 'Miss Mary, I wouldn't like that big devil to get hold of me, but trot out one of your little devils, and I'll give him the mischief.' Gentlemen, I am in that fix."

LAYMEN AS THEIR OWN LAWYERS.

CHAPTER I.

Ladies, your attention. If you are hunting a husband, I shall be easily found. I am 51 years of age and money is no object to or with me, but a good woman is. Box 500, Raymore, Mo.

This advertisement, which appeared in the want columns of a newspaper last spring, resulted in an engagement to marry, a quarrel and the breaking of the engagement, the arrest of the woman and a lawsuit brought by the disappointed and humiliated woman against the man for $25,000. The trial of this lawsuit began in Judge Slover's division of the circuit court yesterday.

Sanford Freeman, a farmer of Raymore, Mo., was the author of the advertisement. It was seen and answered by Mrs. Sarah E. Mason, a widow of 721 East Thirteenth street. A correspondence followed and then a meeting of the couple, and an engagement. There does not seem to have been much love in the matter. Each was seeking a life partner with money.

THEIR STORIES OF THEIR WEALTH.

Freeman told Mrs. Mason he owned a farm of 160 acres worth $50 an acre, and that he had $2,000 in cash. Her husband had died in October, 1902, and she became engaged to Freeman in May, 1903. She told him that under the terms of her husband's will she would get $5,000 if she remained single one year after his death, therefore she could not marry him until October. She told him, too, that in December she would inherit $10,000 from her mother's estate.

She asked Freeman to lend her $45. He did it, but after he left her house he repented and went to the police and had her arrested and taken to the police station. She returned the money. Because of this humiliation, she sued him.

Freeman was his own lawyer yesterday. On the witness stand he furnished amusement for jurors and spectators.

"Did you love this woman?" he was asked. "Didn't you want her money only?"

"Well," he answered, "we w'ant particularly stuck on each other."

HE WANTED THE $15,000.

"It was a business arrangement with you?"

"Yes, sort of."

"You wanted that $15,000?"

"You bet I did."

"What put it into your head that she was deceiving you and hadn't $15,000?"

"I thought if she had it or had it coming and she wanted a man she wouldn't be borrowing $45 from

him. She'd rub through some way."

"How many times have you been engaged?"

"So many times I can't count 'em."

"You deceived her when you told her you had a farm and $2,000?"

"Yes."

"Was that being honest with her?"

"As honest as she was with me."

"Why did you tell her you had all that property?"

"Well, when a man's courtin' a woman he does all that's possible to get her."

"Did you intend to marry her?"

"I done all I could to get her till I found she didn't have no $15,000."

The jury will retire this morning to consider a verdict in the case.

CHAPTER II.

The jury in the case of Mrs. Sarah E. Mason against Sanford Freeman for $25,000 damages for false arrest, failed to reach a verdict yesterday and it was excused until this morning when it will again consider the case. People about the courthouse think that the jury will fail to agree and that it will be because of Freeman's speech to the jury. It was the queerest speech ever made to a jury in this county. While Freeman was speaking, men and women from every floor of the courthouse came in and filled the courtroom. At times the jurors simply roared with laughter and even the judge could not keep a smile off his face.

Freeman is tall, gaunt and awkward, with a wrinkled, sharp face, home-cut hair and a grizzly moustache. He stood up with his overcoat buttoned, and said:

SHOWED THE JURORS HIS CALLOUS HANDS.

"Men, I'm not a lawyer. I don't know much about law nor courts. And I don't see why I'd ought to pay a lawyer to come in here and fight this case for me. I've got nothing to hide, anyway, and my notion of lawyers is that their strongest holt is in coverin' up things and twistin' of 'em around. Now, I ain't goin' to do no squirmin' nor twistin' in this case. I'm goin' to stick to facts. My notion of courthouses an' courts is that they're places for people to come an' have their fallin's out settled up fair an' square. That's what's I'm here for. I help pay taxes to keep up the courts, an' I can't noways see why I'd ought to pay a lawyer. I can't afford to, nohow. I'm jist a poor farmer, one of these fellers the city folks calls a hayseed. I work hard for what I get. You can see that by my hands."

Here Freeman held out his hands, calloused and cracked by hard work, and turned them over slowly so the jurors could see them well.

ALL'S FAIR IN COURTIN' AND HOSS TRADIN'.

"I ain't much for puttin' on style. It's true I try to wear tollable good clothes; that is, good enough for a farmer, so's my neighbors won't be ashamed to have me call an' see 'em. I'm 65 years old an' I've always worked hard for what I got. I admit that I never had brains enough to make a livin' as easy as these lawyers do. But you twelve men look to me like good square people, an' I'm willin' to leave my case to ye, no matter how much these smart lawyers gets up an' argefys after I'm done.

"Now I admit that I lied to this woman. That is, I told her I was a rich farmer. That was a lie, sure enough. It was as big a walloper as ever I told, an' I've told some in my time. I lied to her about that. My only excuse is that I was red hot to get her. I wanted her. An' I hold that all's fair in courtin' an' hoss tradin'. 'A man always puts his best foot forrard when he's courtin' a woman. You men know that. You've all been thar, I'll bet."

At this the jurors fairly roared.

THAT $15,000 LOOKED GOOD TO HIM.

"I see the shoe pinches," the old farmer continued. "Of course, you've all lied to the woman you was courtin'. 'Twouldn't be natural if you didn't. So when this woman told me she was worth $15,000 I wanted her bad. 'Twasn't her I wanted so much as her money. I tell you when I thought she was worth $15,000 she looked mighty good to me, an' I told her I was rich, hopin' that would help land her. Of course, if she'd a married me, and found out I wasn't worth nothin' she'd a been mad, but then I'd been so good to her I'd a smoothed that all over. I'd a come nearer lovin' her nearly to death than any man livin'; that is, if she had the $15,000.

"I tell you, men, and you know it, too, money comes purty nigh makin' any woman look good. A woman may have a hip knocked down or two or three splint knots and spavins, but if she's got money she looks as clean cut and smooth-limbed as a young colt. 'Tain't hard to love a woman that's rich, an' that's a fact. Oh, you know it.

TOO OLD TO MARRY FOR LOOKS.

"Yes, sir, she looked mighty sweet to me till I found out she had nothin' on earth, an' then she didn't look so good. Her beauty jist seemed to fade away with that $15,000 and I soured on her right there. Why men I can get a woman to marry me any day."

Here the old man straightened up and threw his shoulders back.

"I'm 65 years old, but," he lowered his voice and bent near to the jurors, "I'm purty tollable well liked by the wimmen folks yit. Yes siree. Old Sanford Freeman hain't too old to court a likely woman yit. But I'm too old to marry a woman jist for looks. She's got to have money before she can call herself Mrs. Sanford Freeman.

HIS APPEAL TO THE JURY.

"So men, when I found out that she didn't have nuthin' I jist nacherally went back on her an' demanded the $45 she'd borrowed of me. When she wouldn't pay it I had her arrested. Maybe I hadn't ought to done that. If I had it to do over again wouldn't do it. But hindsight is always better than foresight. Leastways I done it and I got my money back. I made up my mind she was jist a smart city woman tryin' to fool an old hayseed; an' I guess I wasn't far away, hey!

"Now, if you want to stick me why go ahead. I'd rather you wouldn't. I don't owe nobody a cent an' I'd like to keep on an' die that way. 'Twon't be pleasant to have a judgment hangin' over me. But it's up to you men. You look right an' square to me an' I'm guessin' right now that you ain't goin' to give an old farmer the worst of it jist because he told a few yarns to the woman he was a courtin'. Think how it was yourselves when you was a courtin' your gals. That's all I have to say."

CHAPTER III.

Samuel Freeman, the old farmer who pleaded his own case in court yesterday, must pay Mrs. Sarah E. Mason $1,000. That was the verdict of the jury this morning. The verdict was signed by only nine of the jurors, the other three refusing to agree to it. The verdict is legal because under the law nine of

twelve jurors can return a verdict. Eight of the jurors stood out all yesterday afternoon for a verdict of $25,000, the full amount sued for. Four of the jurors were in favor of a verdict for amounts from $100 to $1,000. Three of the $25,000 men refused to sign the verdict to-day. This morning the nine jurors got together and agreed upon $1,000.

Mr. Freeman was not in court when the verdict was returned. He went last night to his home in Raymore, Missouri, which is in Cass County. He said to one of the court officers before he left:

HIS DECEIT LOST THE CASE.

"I don't think the jury will agree. But if it does bring a verdict against me it won't do her any good because I hain't got no money. I'm clean broke. If turkeys was sellin' for ten cents apiece, I couldn' buy a feather."

Mrs. Mason's lawyers expect to realize upon the judgment. They say that Freeman had a farm and that he transferred it to a relative after this suit was brought by Mrs. Mason. They will try to have that transfer set aside so that execution can issue against the farm.

One of the jurors in the case said to-day, after the verdict was returned:

"We made up our minds that the old man practiced deceit upon Mrs. Mason from the start. His advertisement for a wife was deceitful. In it he misrepresented his age, saying he was 51 when he was 65. Then it went on to state 'money no object but a good woman is.' Now he states that he wouldn't marry any woman unless she had money. He deceived her all along. He was old enough to know better. We believe that Mrs. Mason was a good woman and that a great injury was done to her when he caused her arrest, and he ought to pay for it. Freeman says himself that everything is fair in courting and horse trading, so he can't kick at this verdict as a result of his courtship."—*Excerpts from Kansas City Star and Kansas City Times.*

BOOKS RECEIVED.

Handbook of the Law of Wills. By George E. Gardner, Professor of Law in the Boston University School of Law. St. Paul, Minn.: West Publishing Co., 1903. Sheep, pp. 726. Price, $3.75. Review will follow.

Fire Insurance, as a valid contract in event of fire and as affected by construction and waiver, estoppel, and adjustment of claims thereunder, including an analysis and comparison of the various standard forms, all reduced to rules, with the relevant statutory provisions of all the states. By George A. Clement, of the New York Bar. Editor of Fire Insurance Digest, Probate Reports Annotated, and the New York Annotated Code of Civil Procedure. New York: Baker, Voorhis & Company, 1903. Sheep, pp. 735. Price, $6.25. Review will follow.

A Treatise on the Constitutional Limitations which rest upon the Legislative Power of the States of the American Union. By Thomas M. Cooley, LL.D., formerly one of the justices of the Supreme Court of Michigan, Jay Professor of Law in the University of Michigan, and Chairman of the Interstate Commerce Commission. Seventh Edition, with large additions, giving the results of the recent cases. By Victor H. Lane, Professor of Law in the University of Michigan. Boston: Little, Brown & Company, 1903. Sheep, pp. 1159. Price $6.00. Review will follow.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. APPEAL AND ERROR — Bill of Exceptions. — A defendant, who was not served and who did not appear, need not be made a party to the bill of exceptions.—Hines v. McLellan, Ga., 45 S. E. Rep. 279.

2. APPEAL AND ERROR — Harmless Error. — Any error in interpreting an answer as an acceptance of the offer of the bill is harmless, defendant having accepted the offer by signing a consent decree. — Town of Bristol v. Bristol & Warren Waterworks, R. I., 55 Atl. Rep 710.

3. APPEAL AND ERROR — Jurisdiction. — The supreme court cannot acquire jurisdiction on appeal by consent of parties to review a judgment of the district court on appeal from the probate court. — Boales v. Ferguson, Neb., 96 N. W. Rep. 337.

4. APPEAL AND ERROR—Motion to Dismiss. — Notice of motion to dismiss an appeal, required by Court of Appeals Practice Rule 24, may be waived on consent of parties. — Arthur Fritsch Foundry & Machine Co. v Goodwin Mfg. Co., Mo., 75 S. W. Rep. 1119.

5. APPEAL AND ERROR — Settlement of Case.—Where a judge who has tried a case is holding court in another circuit, another judge has no power to settle the case for appeal. — Equitable Ins. Co. v. Fishburne, S. Car., 41 S. E. Rep. 204.

6. APPEARANCE — Void Judgment.—A general appearance after entry of judgment on a summons insufficient to give jurisdiction does not validate a void judgment theretofore entered. — Woodham v. Anderson, Wash., 70 Pac. Rep. 536.

7. ASSAULT AND BATTERY — Cross Action. — The party first assaulted may be entitled to damage against his

assailant; but, if the former uses excessiv- force, he, too will become liable for the damages inflicted. — McNatt v. McRae, Ga., 45 S. E. Rep. 248.

8. ASSIGNMENTS — Claim for Penalty. — A claim for the penalty under the statute for taking usurious interest is not assignable before judgment.—*Ex parte* Hiers, S. Car. 45 S. E. Rep. 146.

9. ASSOCIATIONS—Parties to Action.—In a suit against a voluntary association, it cannot be held, on a general demurrer by the defendant, that the beneficiaries of such association were necessary parties. — Plant System Relief & Hospital Department v. Dickerson, Ga., 45 S. E. Rep. 483.

10. ATTACHMENT — Suit for Fees. — It is the duty of attorneys beginning an attachment suit for fees to make known to their defendant clients that the attachment has been sued out and is pending.—Truitt v. Darnell, N. J., 55 Atl. Rep. 692.

11. ATTORNEY AND CLIENT — Attorney's Lien. — An attorney in a common-law action has no lien on his client's money in the hands of a third person, or on funds brought into court for distribution.—Quakertown & E. R. Co. v. Guarantors' Liability Indemnity Co., Pa., 55 Atl. Rep. 1333.

12. ATTORNEY AND CLIENT — Suit for Fees. — Under Practice Act, § 12, Gen. St. p. 2535, attorneys are required, before suing for charges for general services, to serve upon their clients a taxed bill of their fees, etc.—Truitt v. Darnell, N. J., 55 Atl. Rep. 692.

13. BAIL — Recognizance. — A recognizance to answer an indictment in the court of general sessions held binding on a surety without signature of principal.—State v. Quattlebaum, S. Car., 45 S. E. Rep. 162.

14. BANKRUPTCY — Action by Bankrupt. — Bankruptcy of the plaintiff in an action on a debt held to deprive him of capacity to sue thereon, in the absence of a showing that his trustee had elected to discard the claim as a part of the estate. — Atwood v. Bailey, Mass., 68 N. E. Rep. 18.

15. BANKRUPTCY—Allowance of Claims.—All indebtedness to a particular creditor existing at the beginning of the four-months period preceding the debtor's bankruptcy is to be treated as one claim, and any payment made thereon during such period and while the debtor is insolvent constitutes a preference, which must be surrendered before any part of such claim can be allowed. — *In re* Delling, U. S. D. C., N. D. N. Y., 123 Fed. Rep. 852.

16. BANKRUPTCY—Discharge.—After submission of the case to the court on evidence, which fully sustains certain of the specifications of objections to a bankrupt's discharge, an objection to the specifications for lack of verification is too late. — *In re* Robinson, U. S. D. C., D. R. I., 123 Fed. Rep. 844.

17. BANKRUPTCY — Dismissal of Appeal. — Where the record on appeal from an order allowing a claim is not filed within the time allowed by law, nor any application made for an extension of the time, the appeal will be dismissed. — *In re* Alden Electric Co., U. S. C. C. of App., Seventh Circuit, 123 Fed. Rep. 415.

18. BANKRUPTCY — Landlord and Tenant. — A lessor held not entitled to prove a claim against the bankrupt lessee's estate for breach of a covenant that, in case of re-entry because of the lessee's bankruptcy, the latter would pay the damages from the premises remaining unleased or being let for a less rent for the remainder of the term. — *In re* Shaffer, U. S. D. C., D. Mass., 123 Fed. Rep. 111.

19. BANKRUPTCY — Notes as Securities.—Person holding notes of bankrupt, as security for a note, held not entitled to proceed on the security until a default in the other note.—Willey v. Browne, Pa., 55 Atl. Rep. 1029.

20. BANKRUPTCY—Receiver.—The amendment of February 5, 1903, to Bankr. Act 1898, § 3. subd. 4, 30 Stat. 546, 547, U. S. Comp St. 1901, p. 3422, making the appointment of a receiver because of insolvency an act of bankruptcy, is not retroactive, and such an appointment, made prior to the passage of the amendatory act, will not support a petition in involuntary bankruptcy filed after that date, although the receivership still continues. — Seaboard Steel Casting Co. v. William R. Trigg Co., U. S. D. C., E. D. Va., 123 Fed. Rep. 75.

21. BANKRUPTCY — Sufficiency of Allegation. — An allegation, in a petition in involuntary bankruptcy against a corporation, that within four months, while insolvent, it suffered or permitted attachments to be issued against it and levied, which attachments "have not to the present time been vacated," is insufficient to charge an act of bankruptcy.—Seaboard Steel Casting Co. v. William R. Trigg Co., U. S. D. C., E. D. Va., 123 Fed. Rep. 75.

22. BANKRUPTCY — Surrender of Assets.—Surrender of an insolvent's assets to a trustee in bankruptcy by the assignee held not to constitute a waiver of the assignee's equitable lien for services and disbursements made for the benefit of the insolvent estate. — *In re* Chase, U. S. C. C. of App., First Circuit, 123 Fed. Rep. 753.

23. BANKRUPTCY — Validity of Trust. — An agreement by a bankrupt to hold certain money advanced by his wife's father in trust for his daughter, made where no rights of creditors were affected, and which he had at all times recognized and acknowledged, held valid as against his creditors in bankruptcy, and to entitle the daughter to share with other creditors in his estate.—*In re* Upson, U. S. D. C., N. D. N. Y., 123 Fed. Rep. 807.

24. BANKS AND BANKING — Insolvency. — A bank held entitled to set off a corporation's deposit as against an indebtedness of the corporation to it on insolvency of the corporation. — Wheaton v. Daily Telegraph Co., U. S. C. C. of App., Second Circuit, 123 Fed. Rep. 61.

25. BENEFIT SOCIETIES — Reinstatement of Member.—On readmission of expelled member in a beneficial association, held that his beneficiary's rights dated from the time of his reinstatement. — O'Brien v. Brotherhood of the Union, Conn., 55 Atl. Rep. 577.

26. BILLS AND NOTES—Indorsement.—That a suit on a negotiable note by an indorsee was brought by attorneys employed by the payee at its expense without intention to claim reimbursement from the indorsee held immaterial. — New Haven Mfg. Co. v. New Haven Pulp & Board Co., Conn., 55 Atl. Rep. 604.

27. BOUNDARIES — Agreement. — A parol agreement between coterminous proprietors that a certain line is the true dividing line is valid, if accompanied by possession to the agreed line. — Farr v. Woolfolk, Ga., 45 S. E. Rep. 230.

28. BRIBERY — Evidence. — On trial of an indictment for receiving a bribe while superintendent of the police department of the city, under an agreement to protect the person furnishing the bribe in an unlawful occupation, evidence held sufficient to show that the person to whom the money was paid was acting for and in behalf of the defendant. — State v. Ames, Minn., 96 N. W. Rep. 330.

29. CANCELLATION OF INSTRUMENTS—Undue Influence. —Close confidential relations having been shown between parties to a transfer of property, the burden was on the transferee to show that transferror was actuated by no undue influence in making the transfer, which was greatly to the former's benefit. — Dowie v. Driscoll, Ill., 68 N. E. Rep. 56.

30. CANCELLATION OF INSTRUMENTS — Void Assignment. — Where an assignment is void on its face, it is unnecessary to resort to any proceeding to have it so declared. — A. Ehrlich & Bro. v. Shuptrine, Ga., 45 S. E. Rep. 279.

31. CARRIERS — Burning of Fuse.—The ordinary burning out of a fuse of an electric street car held not *prima facie* evidence of negligence, in an action for injuries to a passenger. — Cassady v. Old Colony St. Ry. Co., Mass., 68 N. E. Rep. 10

32. CARRIERS — Excessive Fares. — That passengers were afforded an opportunity to purchase tickets at

regular ticket offices before boarding trains did not authorize a railroad company to charge passengers boarding trains without tickets an excess fare of 25 cents over the maximum rate fixed by statute. — Fulmer v. Southern Ry. Co., S. Car., 45 S. E. Rep. 196.

33. CARRIERS — Live Stock. — Where a connecting carrier refused to accept a shipment of live stock, it was the initial carrier's duty to notify the consignor, unless the animals would be injured by the delay. — Louisville & N. R. Co. v. Duncan & Orr, Ala., 34 So. Rep. 988.

34. CARRIERS — Seizure of Liquor by Authorities.—A railroad company is not liable for loss of property occasioned by its seizure by an officer of the law under a *prima facie* valid authority. — Southern Ry. Co. v. Heymann, Ga., 45 S. E. Rep. 491.

35. CARRIERS—Tickets.—A passenger ejected for a defect in her ticket resulting from the conductor's negligence in punching the same held only entitled to recover in an action on contract and not in an action *ex delicto*.—Western Maryland R. Co. v. Schaun, Md., 55 Atl. Rep. 701.

36. CHAMPERTY AND MAINTENANCE — Equitable Interest.—Where a wife assists her husband financially in prosecuting a prosecution to judgment, she is not guilty of champerty.—*Ex parte* Hiers, S. Car., 45 S. E. Rep. 146.

37. COLLEGES AND UNIVERSITIES—Mortgage.—A note and mortgage running to a university, trustee for a certain college, held valid, though there has been no legal incorporation of the college.—Goddard v. Clarke, Neb., 96 N. W. Rep. 350.

38. COLLISION—Improper Anchorage.—A vessel, anchoring without necessity in too close proximity to one previously anchored, is not in position to require the latter to incur extraordinary risks during a storm in order to avoid a collision.—The Juniata, U. S. D. C., E. D. Va., 123 Fed. Rep. 861.

39. COMMERCE—Injunction.—When a controversy between parties relative to transportation rates is pending before the interstate commerce commission, and no irreparable injuries are threatened, equity in advance of the action of the commission will not ordinarily enjoin the enforcement of the rates.—Tift v. Southern Ry. Co., U. S. C. C., S. D. Ga., 123 Fed. Rep. 789.

40. CONTEMPT—Lack of Jurisdiction.—Where an order restraining *de facto* officers from exercising the functions of their office was issued without jurisdiction, a disobedience of the order did not constitute a contempt of court.—State v. Rice, S. Car., 45 S. E. Rep. 153.

41. CONTRACTS—Debt of Another.—Under Code 1896, § 1900, a complaint on an alleged written agreement to pay a debt of another held not objectionable for failure to allege a consideration, in the absence of a plea denying consideration.—Georgia Home Ins. Co. v. Boykin, Ala., 34 So. Rep. 1012.

42. CONTRACTS—Fraudulent Representations.—Unless it is shown that injuries or damages resulted or must result from fraudulent representations inducing the making of a contract, they do not constitute a defense thereto.—Nelson v. Grondahl, N. Dak., 96 N. W. Rep. 299.

43. CONTRACTS—Recission.—Courts cannot, by requiring a disclosure of facts, deprive one party to a contract of the advantage which superior judgment or better information may give.—Oliver v. Oliver, Ga., 45 S. E. Rep. 232.

44. CORPORATIONS—Bonds.—A treasurer of a corporation, merely authorized to "have charge of" its securities, held not entitled to change the registration and sell certain of its bonds without special authority.—Jennie Clarkson Home for Children v. Chesapeake & O. Ry. Co. 83 N. Y. Supp. 918.

45. CORPORATIONS—Change of Name. — Where the name of an insurance company was changed by an act of the general assembly, such change did not affect its liabilities or rights, nor deprive a member of the old company of his membership in the new.—South Carolina Mut. Ins. Co. v. Price, S. Car., 45 S. E. Rep. 173.

46. CORPORATIONS — Right of Set-Off. — A bank held entitled to set off a corporation's deposit as against an indebtedness of the corporation to it on insolvency of the corporation.—Wheaton v. Daily Telegraph Co., U. S. C. C. of App., Second Circuit, 122 Fed. Rep. 61.

47. CORPORATIONS—Service.—Service on "G, General Manager of" defendant company, by leaving a copy of the writ at his most notorious place of abode, held insufficient.—Stuart Lumber Co. v. Perry, Ga., 45 S. E. Rep. 251.

48. CORPORATIONS—Trust Relation.—A director, when dealing with a stockholder for the purchase of shares, must make a full disclosure of all material facts as to the value of his property, known to him and unknown to the stockholder.—Oliver v. Oliver, Ga., 45 S. E. Rep. 232.

49. COURTS—Jurisdiction.—In an action in the county court against a nonresident of the county to recover a sum of money only, jurisdiction cannot be conferred by consent.—Perlman v. Gunn, 83 N. Y. Supp. 985.

50. CRIMINAL EVIDENCE Conspiracy. — The issue of conspiracy is not for the jury until there is such evidence showing conspiracy as in the opinion of the court leaves it an open question.—Collins v. State, Ala., 34 So. Rep. 998.

51. CRIMINAL EVIDENCE—Diagram.—That a diagram introduced in evidence was made by the state's solicitor held immaterial where the diagram was otherwise correct.—Jarvis v. State, Ala., 34 So. Rep. 1025.

52. CRIMINAL EVIDENCE—Influence of Drugs.—That accused was under the influence of drugs when he made certain confessions and admissions held not to affect the admissibility thereof.—People v. Kent, 83 N. Y. Supp. 948.

53. CRIMINAL TRIAL—Forgery. — Where defendant's counsel had ample opportunity to present a forged note to the jury, refusal of the court to permit such presentation during the examination of a particular witness held harmless.—State v. Donovan, Vt., 55 Atl. Rep. 611.

54. DEATH—Contributory Negligence. — In an action for wrongful death under the statute of Alaska, the contributory negligence of the deceased is a defense.—*In re* Kimball S. S. Co., U. S. D. C., N. D. Cal., 123 Fed. Rep. 838.

55. DEEDS—Consideration Void.—A deed founded on the promise of the grantee to do an unlawful act is absolutely void.—Watkins v. Nugen, Ga., 45 S. E. Rep. 260.

56. DEPOSITS IN COURT — Settlement. — Where the claimant of a fund in court has brought in a party having an interest in another portion of the fund, to whom such claimant is indebted, the court may order the fund paid to the latter on the debt due him by the claimant.—Butler v. Butler, S. Car., 45 S. E. Rep. 184.

57. DIVORCE—Desertion.—Where a husband leaves his wife, his intent to desert her may be established by proof justifying the inference that he thereafter remained alive and able to return to her.—Alward v. Alward, N. J., 55 Atl. Rep. 996.

8. DIVORCE—Judgment.—Where a court had no jurisdiction to open a divorce decree, its subsequent order for alimony and suit money was void.—Metler v. Metler, Wash., 73 Pac. Rep. 535.

59. DRUNKARDS—Appointment of Commissioner.—In proceedings for the appointment of a commission for an alleged incompetent on the ground of drunkenness, such commission should not be granted, except on notice to the incompetent, where his habits are disputed. —*In re* Coffin, 83 N. Y. Supp. 941.

60. EMINENT DOMAIN—Public Service.—Construction of telephone poles and wires along a country highway, without payment of compensation or consent of abutting owners, cannot be justified on the ground of public service.—Gray v. New York State Tel. Co., 83 N. Y. Supp. 920.

61. EMINENT DOMAIN—Right of Way.—A licensee of certain land held to take subject to a prior deed convey-

ing a right of way to defendant's assignor, so as to entitle the latter to construct a railway over the land without condemnation of the licensee's interest.—Coyne v. Warrior Southern Ry., Ala., 34 So. Rep. 1004.

62. EQUITY — Bill of Review. — To entitle a party to maintain a bill of review, it is not enough that the new evidence would probably have induced a different decision, but it must further appear that the party complaining was deprived of substantial equities by the decree.—Keith v. Alger, U. S. C. C. of App., Sixth Circuit, 123 Fed. Rep. 32.

63. EQUITY—Consent Decree.—A consent decree cannot be set aside, except by consent.—Town of Bristol v. Bristol & Warren Waterworks, R. I., 55 Atl. Rep. 710.

64. EQUITY—Laches.—Laches cannot be predicated of one whose delay is occasioned by assurances of his agent that legal proceedings will be useless, and by frequent promises that payment will be made.—Cushing v Schoeneman, Neb., 96 N. W. Rep. 346.

65. ESTOPPEL — Action on Note. — Admission of an allegation of the complaint in an action on a note held not to estop defendant from averring that the note was delivered conditionally, and was not in fact given for value received —New Haven Mfg. Co. v. New Haven Pulp & Board Co., Conn., 55 Atl. Rep. 604.

66. ESTOPPEL — Res Ipsa Loquitur.—In an action for injuries to a passenger, plaintiff's unsuccessful attempt to prove by direct evidence the precise cause of the burning out of the fuse held not to estop her from relying on the doctrine of *res ipsa loquitur*.—Cassady v. Old Colony St. Ry. Co., Mass., 68 N. E. Rep. 10.

67. EVIDENCE—Accounting.—The failure of a partner to inspect the firm books and object to any charges against him amounts to such an acquiescence in the entries therein as to bind him in an action for an accounting.—Safe Deposit & Trust Co. v. Turner, Md., 55 Atl. Rep. 1023.

68. EVIDENCE—Carriers.—Evidence of parol directions of a consignor of live stock to an initial carrier, that the same should be delivered to a particular connecting carrier, held not objectionable as contradicting the bill of lading.—Louisville & N. R. Co. v. Duncan & Orr, Ala., 34 So. Rep. 988.

69. EVIDENCE—Conditional Sales —Where hides were sold through brokers, and the sale notes evidenced an absolute sale, parol evidence was inadmissible to show an intent of the parties to reserve title in the seller until the hides were paid for.—Finnigan v. Shaw, Mass., 68 N. E. Rep. 35.

70. EVIDENCE—Mortality Tables.—The Carlisle Mortality and Annuity Tables will be admitted in evidence without proof of their correctness.—Atlanta Ry. & Power Co. v. Monk, Ga., 45 S. E. Rep. 404.

71. EVIDENCE—Res Gestæ.—A statement of an agent made contemporaneously with the principal act or transaction and forming a part of it, is competent evidence, as in the nature of *res gestæ*. — Balding v. Andrews, N. Dak., 96 N. W. Rep. 305.

72. EVIDENCE—Statements of Deceased. — Statements by deceased while under the influence of opiates held insufficient to release defendant from liability for negligence in injuring him.—Copley v. Union Pac. Ry. Co., Utah, 74 Pac. Rep. 517.

73. EXCHANGE OF PROPERTY — Rights Acquired. — Where one enters into possession of land under a parol contract of exchange, and surrender possession of land owned by him, he obtains a complete equity in the land acquired by the exchange. — Baldwin v. Sherwood, Ga., 45 S. E. Rep. 216.

74. EXECUTORS AND ADMINISTRATORS—Action Against —A suit against "A, administrator," on a note containing the words "I promise to pay," and signed, "B estate, A, administrator," is a suit against A as an individual.—Glisson v. E. A. Weil & Co., Ga., 45 S. E. Rep. 221.

75. EXECUTORS AND ADMINISTRATORS — Barred Claim. —Payment of interest by an executor on a mortgage note after it was barred for nonpresentation, held not to revive the claim. — Dime Sav. Bank v. McAllenney, Conn., 55 Atl. Rep. 1019.

76. EXECUTORS AND ADMINISTRATORS — Contest of Will.—Where a will devised one-half of testatrix's real estate to the executrix, but gave her no control over the same, she was not entitled to be allowed expenses incurred in managing it.—*In re* Ogden's Estate, 88 N. Y. Supp. 977.

77. EXECUTORS AND ADMINISTRATORS — Objection to Sale.—It is no ground of objection to confirmation of a sale by executors that the sale is not for the best interest of some particular heir.—*In re* Wickersham's Estate Cal., 73 Pac. Rep. 541.

78. FIRE INSURANCE—Representations. — Representations made in writing in an application for insurance in response to written questions, and warranted to be true as a basis for the contract, are by the action of the parties made material as matter of law.—Carrollton Furniture Mfg. Co. v. American Credit Indemnity Co., U. S. C. C. of App., Second Circuit, 123 Fed. Rep. 25.

79. FIREWORKS—Negligence. — Failure of the owners of an amusement field to ascertain a defect in a bomb, which prematurely exploded and injured plaintiff, but which was not discoverable on inspection, held not negligence.—Sebeck v. Plattdeutsche Volksfest Verein, U. S. C. C. of App., Second Circuit, 123 Fed. Rep. 11.

80. FORGERY—Note. — A stipulation written on the back of a note, authorizing payment in clapboards, made at the time the note was executed, held a part of the note, so as to be a subject of forgery.—State v. Donovan, Vt., 55 Atl. Rep. 611.

81. FRAUDS, STATUTE OF—Boundaries.—An agreement as to the true dividing line disputed is not within the statute of frauds because not in writing.—Farr v. Woolfolk, Ga., 45 S. E. Rep. 230.

82. FRAUDS, STATUTE OF—Performance Within a Year.—A parol contract by which money was lent to a town to be repaid in 10 years is not void, under the Iowa statute of frauds, on the ground that it was not to be performed within one year, where it was to be, and was, performed at once by the lender.—Fernald v. Town of Gilman, U. S. C. C., S. D. Iowa, 123 Fed. Rep. 797.

83. GUARDIAN AND WARD—Claims Against Ward.—The debts of a ward are not recoverable by action against the guardian, described as guardian of the ward.—Municipal Court of City of Providence v. Le Valley, R. I., 55 Atl. Rep. 640.

84. HEALTH—Fire Escape. — Under the Pennsylvania fire escape act of 1879 (P. L. 128), the certificate of approval of a fire escape by the designated officers is not conclusive evidence of a compliance with the act in an action for damages brought thereunder. — Snyder v. Bonbright, U. S. C. C., E. D. Pa., 123 Fed. Rep. 817.

85. INJUNCTION—Civil Rights.—Where it is manifest that a criminal prosecution is threatened to prevent the exercise of civil rights, injunction is the proper remedy.—Georgia R. & Banking Co. v. City of Atlanta, Ga., 45 S. E. Rep. 256.

86. INJUNCTION—Fixtures. — Bill for an injunction to compel defendant to replace on plaintiff's property a building removed therefrom held demurrable for want of facts showing the building a fixture.—Bowie v. Smith, Md., 55 Atl. Rep. 625.

87. INJUNCTION—Restraining Trespass. — An owner of land is entitled to an injunction to restrain trespasses hereon where it is shown that a trespass has been committed by the defendant and will be continued or repeated unless restrained. — Pittsburg, S. & W. R. Co. v. Fiske, U. S. C. C. of App., Third Circuit, 123 Fed. Rep. 760.

88. INTOXICATING LIQUORS — Tax on Manufacture.—Though plaintiff was liable for the specific tax imposed on the sale of malt liquors by manufacturers, a tax collector has no authority to issue execution against him.—Brewer v. Nutt, Ga., 45 S. E. Rep. 269.

89. JUDGMENT—Limitations.—The recording of a deed not referring to a finding and decree does not set in mo-

tion limitations as against an action to set aside such decree.—Cushing v. Schoeneman, Neb., 96 N. W Rep. 346.

90. JURY—Bias. — Discharge of a juror for bias, on a statement that he could not act impartially as against an insurance company, held not error, where it appeared at the opening of the trial that an insurance company might be the real party in interest.—Marande v. Texas & P. Ry. Co., U. S. C. C. of App., Second Circuit, 123 Fed. Rep. 42.

91. JURY—Partition. — Any right of defendants in a partition suit to a jury trial as to satisfactory proof moving the court to order a sale held waived by waiting till after the clerk has ordered an actual partition.—Albemarle Steam Nav. Co. v. Worrell, N. Car., 45 S E. Rep. 466.

92. JURY—Waiver.—The right to a trial by jury in a judicial magistrate's court in the city of Charleston, given by Code 1902, § 1012, subd. d, held not waived by failure of defendant to pay the costs of summoning and paying jurors.—Pinckney v. Green, S. Car., 45 S. E. Rep. 202.

93. LIFE INSURANCE—Authority of Promoters.—An insurance policy signed with the name of the president and secretary of the company, and delivered to the applicant for membership before the corporation has come into existence, is not enforceable against it after organization. — Montgomery v. Whitbeck, N. Dak., 96 N. W. Rep. 327.

94. LIFE INSURANCE—Unearned Premium. — Return of unearned premium in advance of surrender of policy by insured held not essential to effectiveness of notice of cancellation given by the insurer. — Schwarzschild & Sulzberger Co. v. Phœnix Ins. Co., U. S. C. C. of App., Second Circuit, 123 Fed. Rep. 52.

95. LIMITATION OF ACTIONS—Conditional Promise. — A conditional promise to pay a debt barred by the statute is not sufficient, unless accompanied with an express acknowledgment and a payment on account, without proof of condition fulfilled.—Tridell v. Munhall, U. S. C C., W. D. Pa., 123 Fed. Rep. 802.

96. LIMITATION OF ACTIONS—Misnomer.—Where a corporation sued under an incorrect name pleaded to the merits, the fact that the suit was barred at the time the court ordered an amendment, inserting the corporation's proper name, did not affect the court's jurisdiction to order such amendment.—Sentell v. Southern Ry. Co., S. Car., 45 S. E. Rep. 155.

97. LIMITATION OF ACTIONS—New Promise. — An alleged new promise cannot be availed of to remove the bar of the statute of limitations, in the absence of a notice of intention to rely thereon, as required by Code 1887, § 2922.—Kesterson v. Hill, Va., 45 S. E. Rep. 288.

98. MANDAMUS — Highways. — Mandamus held the proper remedy to compel a highway commissioner to remove obstructions in the highway and attach the same to the proper road district.—People v. Marlett, 93 N. Y. Supp. 962.

99. MANDAMUS—Right to Office.—Mandamus will not be granted to compel the surrender of a public office, where relator's right to the office presents a debatable question of law.—Searing v. Clark, N. J., 55 Atl. Rep. 690.

100. MARINE INSURANCE — Application.— An accepted application for marine insurance, or binding slip, constitutes a contract of insurance which will support an action at law, and a court of admiralty has jurisdiction of an action thereon to recover for a loss.—Kerr v. Union Marine Ins. Co., U. S. D. C., S D. N. Y., 123 Fed. Rep. 835.

101. MARITIME LIEN—Waiver. — The taking of a mortgage on a vessel to secure future advances for supplies is not inconsistent with the claiming of a maritime lien given by a statute for supplies subsequently furnished.—The Thomas Morgan, U. S. D. C., D. S. Car., 123 Fed. Rep. 781.

102. MASTER AND SERVANT — Concurrent Negligence.— Where a master failed to furnish a safe place for his servant in which to work, and an injury resulted from the negligence of the master and the concurrent negligence of a fellow servant, the master is liable. — Jackson v. Merchants' & Miners' Transp. Co., Ga., 45 S. E. Rep. 254

103. MASTER AND SERVANT—Enticing Away Servant.— Hiring of minor, knowing him to be under a contract made by his father to do farm work, is not a misdemeanor, under Cr. Code, § 359 — State v. Rhody, S. Car., 45 S. E. Rep 205.

104. MASTER AND SERVANT Vice Principal. — That the assistant foreman of defendant company engaged in same labor as a common workman did not as matter of law, make him any the less a vice principal. — Chicago Hair & Bristle Co. v. Mueller, Ill., 68 N. E. Rep. 51.

105. MECHANICS' LIENS —Purchase of Goods. — Contractor held to have been owner's agent in ordering certain goods from plaintiff, and the latter's notice of lien properly included the item for the goods.—Cline v. Shell, Oreg., 73 Pac. Rep. 12.

106. MORTGAGES — Consideration. — The subsequent agreement of a mortgagor in possession to surrender it and relinquish his right to redeem, where made by mutual mistake and without adequate consideration, is not enforceable.—Wells v. Geyer, N. Dak , 96 N. W. Rep. 289.

107. MORTGAGES—Conveyance by Pledgee. — Where a debt is secured by a deed to land, the creditor may transfer any part of the debt, and with it convey the land itself.—Cumming v. McDade, Ga., 45 S. E. Rep 479.

108. MORTGAGES—Deed Construed as Mortgage. — A mortgagee of a party holding a deed to land subsequently declared to be a mortgage is equitable assignee of the rights of the mortgagor.—Kiddell v. Bristow, S. Car., 45 S. E. Rep. 174.

109. MORTGAGES — Trustees.—A trustee in a trust deed has the power, and it is its duty independently of the provisions of the trust deed, to invoke the aid of a court of equity to preserve the trust estate whenever the necessity arises.—Old Colony Trust Co. v. City of Wichita, U. S. C. C., D. Kan., 123 Fed. Rep. 762.

110. MUNICIPAL CORPORATIONS — Attempt to Commit Crime. — Mere solicitation of another to commit a crime with intent to commit the same held an attempt to commit it within Pen. Code, § 34. — People v. Mills, 83 N. Y. Supp. 947.

111. MUNICIPAL CORPORATIONS — Highways. — A municipal corporation held liable in its corporate capacity for acts of its agents in entering on private land and laying out a highway thereon. — Hathaway v. Osborne, R. I., 55 Atl. Rep. 700.

112. MUNICIPAL CORPORATIONS — Money Had and Received. — One who, in good faith, lent money to a town to be used for a corporate purpose, taking its bonds therefor, is entitled to recover in an action for money had and received, where the bonds are void for want of power in the town to issue the same. — Fernald v. Town of Gilman, U. S. C. C., S. D. Iowa. 123 Fed. Rep. 797.

113. MUNICIPAL CORPORATIONS — Torts of Officers — Where an act is done by the officers and agents of a municipality which is within its corporate power, the city will be liable for the act of such officers or agents proceeding in irregular manner. — Langley v. City Council of Augusta, Ga., 45 S. E. Rep. 486.

114. NAVIGABLE WATERS — Tide Lands. — The public's right to tide lands below highwater mark held to extend to all lands not so used or built upon as to prevent the passage of boats and the natural ebb and flow of the tide. — Rhode Island Motor Co. v. City of Providence, R. I., 55 Atl. Rep. 696.

115. NEGLIGENCE — Burden of Proof.—In an action to recover from the owner of a burned building damages from the communication of the fire to other property, burden of proof held to be on plaintiff to establish both the cause of the fire and defendant's negligence.—Balding v. Andrews, N. Dak., 96 N. W. Rep. 305.

116. NEGLIGENCE—Fire Set by Engine. — Where grain was set on fire by a defective engine belonging to d -

fendant, operating a threshing engine, plaintiff was not bound to guard against the defect in the engine until he knew his property was in danger. — Mansfield v. Richardson, Ga., 45 S. E. Rep. 269.

117. NOTICES—Deed.—Constructive notice of a deed is not constructive notice of a finding and decree not referred to in the deed.—Cushing v. Schoeneman, Neb., 96 N. W. Rep. 346.

118. NOVATION—Insurance.—Where defendant, as part of the considerat on for the purchase of a business, agreed with plaintiff to pay his vendor's portion of a debt owing to plaintiff, defendant could not rescind such contract for his vendor's fraud without plaintiff's concurrence.—Georgia Home Ins. Co. v. Boykin, Ala., 34 So. Rep. 1012.

119. NUISANCE — Right of Action. — In an action to recover against a railroad for maintaining a public nuisance, that the stagnant pool could have been drained by the city would not relieve the railroad company from liability for special damages caused. — Savannah, F. & W. Ry. Co. v. Parish, Ga., 45 S. E. Rep. 280.

120. OFFICERS — Exercise of Functions. — Pending a trial of the title to a public office, the court has no authority to restrain *de facto* officers from the exercise of the public functions of the office on a rule to show cause. —State v. Rice, S. Car., 45 S. E. Rep. 153.

121. PARTIES — Estoppel, —A mortgagee, having made mortgagor's heirs parties to a suit to foreclose, held estopped to object that they were not proper parties, and, therefore, not entitled to urge the statute of limitations against his right to foreclose. — Gleason v. Hawkins, Wash., 73 Pac. Rep. 533.

122. PARTITION — Intervention.—In a suit for partition of land claimed to belong to petitioner's mother, petitioner, who held no lien on the land, held not entitled to intervene and claim it as a general creditor of his mother.—Rice v. Donald, Md., 55 Atl. Rep. 620.

123. PARTNERSHIP — Sharing Losses. — Entries on the books of a firm as to the shares of profits or losses, when acquiesced in, are conclusive of the rights of the partners. — Safe Deposit & Trust Co. v. Turner, Md., 55 Atl. Rep. 1023.

124. PAYMENT — Application. — Where a debtor, owing two notes, made a payment to his first creditor, who applied it on a secured note, thereafter the parties could not change the application to an unsecured note to the prejudice of a second creditor without his consent. — Pinney v. French, Kan., 73 Pac. Rep. 94.

125. PHYSICIANS AND SURGEONS—Claim for Services.—A physician's claim for services in attending testatrix in her last illness, for 17 days, of $350, held excessive, and should be reduced to $150. — *In re* Ogden's Estate, 83 N. Y. Supp. 977.

126. PRINCIPAL AND AGENT—Action Against Principal. —Where a seller of goods, after discovering the purchaser's principal, elects to sue the principal, and does so to final judgment, he cannot thereafter sue the agent. —E. J. Codd Co. v. Parker, Md., 55 Atl. Rep. 623.

127. PRINCIPAL AND AGENT — Purchase by Agent. — Where an agent, authorized to purchase for cash, buys on credit, his principal is not bound for the price.— Chapman v. Americus Oil Co., Ga., 45 S. E. Rep. 268.

128. PUBLIC LANDS—Jurisdiction of Court.—Courts are without jurisdiction to determine controversies between claimants of public lands, the title to which has not passed from the United States by the issuance of a patent. — Northern Lumber Co. v. O'Brien, U. S. C. C., D. Minn., 124 Fed. Rep. 819.

129. PUBLIC LANDS — Rights of Pre-emptor. — One entitled by law to pre-empt a tract of land under the timber culture act takes the land and all permanent improvements thereon free from all claims except those of the United States.—Hill v. Pitt, Neb., 96 N. W. Rep. 339.

130. PUBLIC LANDS — Rights of State. — The rights of the state to tide lands below high-water mark are held in trust for the benefit of the inhabitants of the state, and not as a private proprietor. — Rhode Island Motor Co. v. City of Providence, R. I., 55 Atl. Rep. 696.

131. RAILROADS — Crossing Accident.—In an action for injuries sustained at a railroad crossing, a question as to defendant's negligence cannot be submitted where there is no evidence that those in charge of the locomotive saw plaintiff in time to avoid the accident. — Northern Cent. Ry. Co. v. McMahon, Md., 55 Atl. Rep. 627.

132. RAILROADS—Fires Caused by Engine.—A company operating a private logging railroad is liable for damages by fires caused by sparks from its engine igniting combustible material on its right of way. — Simpson v. Enfield Lumber Co., N. Car., 45 S E. Rep. 469.

133. RAILROADS—Injury to Epileptic.—For an epileptic to walk on a railroad track, where he falls in a fit, and is struck by a train, is contributory negligence. — Marks v. Atlantic C. L. Ry. Co., N. Car., 45 S. E. Rep. 468.

134. RAILROADS — Loading Cars.—A railroad company which fails to give special notice to workmen engaged in loading cars on a side track of its intention to back an engine against the cars held negligent and liable for injuries sustained in such operation. — Copley v. Union Pac. Ry. Co., Utah, 73 Pac. Rep. 517.

135. RAILROADS — Nuisance. — Where a railroad company consolidated with another and continued to main tain a nuisance erected by the first company, it was liable for damages accruing therefrom, without notice and demand for removal. — Jones v. Seaboard Air Line Ry. Co., S. Car , 45 S. E. Rep. 188.

136. RECEIVERS — Error in Appointment —Where de fendant in execution was not a trader, and plaintiffs were unsecured creditors, and the sheriff under a general execution had levied upon the land of the debtors, it was error to appoint a receiver. — Reynolds & Hamby Estate Mortg. Co. v. Kingsberry, Ga., 45 S. E. Rep. 285.

137. RECORDS — Deed. — A deed spread on the record of deeds in the recorder's office is properly recorded, though not indexed. — Greenwood Loan & Guarantee Ass'n v. Childs, S. Car., 45 S. E. Rep. 167.

138. RELEASE — Pleading.—In an action for injuries to a servant, a rejoinder to a replication setting up facts to avoid a release pleaded held demurrable. — Western Ry. v. Arnett, Ala., 34 So. Rep. 997.

139. REMOVAL OF CAUSES — Waiver of Objection.—The right to have a cause remanded after removal on the ground that neither party is a resident of the district is waived by the entry of a general appearance by plaintiff in the federal court, and a delay of a year before filing a motion to remand. — Philadelphia & Boston Face Brick Co. v. Warford, U. S. C. C., D. Mass., 123 Fed. Rep. 843.

140. SALES — Action for Value.—A clause in a contract for the construction of an elevator, authorizing the builder to remove the same if not paid for, held no defense to an action for the value thereof, where it had been accepted before being destroyed, though not paid for.—Plunger Elevator Co. v. Day, Mass., 68 N. E. Rep. 16.

141. SALES — Executory. — A contract for the purchase of a specified quantity of coal to be shipped by the seller is executory, and does not pass title to any specific coal until the same is laden for shipment. — Taylor v. Fall River Iron Works, U. S. D. C., S. D. N. Y., 123 Fed. Rep. 826.

142. SALES—False Representations.—A false statement by a merchant to a commercial agency may be offered in evidence with other representations to show fraud in the purchase of merchandise. — Courtney v. William Knabe & Co. Mfg. Co., Md., 55 Atl. Rep. 614.

143. SHIPPING — Charter Party. — It is competent for a charterer of a pleasure yacht to stipulate in the charter party against his liability for loss or damage to the vessel through his negligence, there being no question of public policy involved. — McCormick v. Shippy, U. S. C. C. of App., Second Circuit, 123 Fed. Rep. 48.

144. SHIPPING—Demurrage—Where by a contract for the purchase of coal it was to be shipped by the sellers, they were authorized to bind the cargo by a lien for demurrage, either as owners or as agents of the purchaser,

—Taylor v. Fall River Iron Works, U. S. D. C., S. D. N. Y., 123 Fed. Rep. 826.

145. SHIPPING—Injury of Stevedores.—Stevedores held entitled to recover damages from the ship for personal injuries resulting from the disobedience of orders or negligence of the winchmen, who were furnished by the ship, in discharging a cargo of logs.—The Gladestry, U. S. D. C., E. D. N. Y., 123 Fed. Rep. 112.

146. SHIPPING—Overcrowding Boat.—Passengers who overcrowded a boat so that she was swamped, after being told by the officer in charge that she was overloaded, and asked some of them to get out and wait till she returned, were guilty of contributory negligence.—*In re* Kimball S. S. Co., U. S. D. C., N. D. Cal., 123 Fed. Rep. 889.

147. SPECIFIC PERFORMANCE—Equity Jurisdiction.—A bill held to state a cause of action within the jurisdiction of equity for the specific performance of a contract for the purchase of personal property, on the ground that it had been partially executed.—Raymond Syndicate v. Brown, U. S. C. C., D. N. H., 123 Fed. Rep. 80.

148. SPECIFIC PERFORMANCE—Partition.—Where a contract for the sale of land was conditioned on partition of the land, plaintiff cannot enforce the contract, where there was no excuse for his failure to secure such partition.—Brooks v. Miller, Ga., 45 S. E. Rep. 485.

149. SPECIFIC PERFORMANCE—Petition.—Where, under a contract for the sale of realty, the conditions to be performed are concurrent, plaintiff in an action for specific performance must allege and prove performance or a tender thereof.—Fisher v. Buchanan, Neb., 96 N. W. Rep. 339.

150. STREET RAILROADS—Breach of Contract.—Impossibility of performance held no defense to an action for breach of contract to build street railroad.—Borough of Montooth v. Brownsville Ave. St. Ry. Co., Pa., 55 Atl. Rep. 1036.

151. STREET RAILROADS—Child Crossing Street.—A child 6 1-2 years of age, crossing a street railway track on her way to school without looking and listening, held not guilty of contributory negligence as a matter of law.—McDermott v. Boston Elevated Ry. Co., Mass., 68 N. E. Rep. 34.

152. TELEGRAPHS AND TELEPHONES—Wires in Building.—Where telephone wires were negligently allowed to remain in a building, the fact that defendant did all in its power to obviate the danger from atmospheric electricity held no defense to an action for injuries therefrom.—Southern Bell Telephone & Telegraph Co. v. McTyer, Ala., 34 So. Rep. 1020.

153. TRIAL—Expression of Opinion by Judge.—It is not reversible error for the judge in a federal court to express his own opinion of the facts, if the rules of law are correctly laid down, and the jury are given to understand that they are not bound by such opinion.—Nome Beach Lighterage & Transportation Co. v. Munich Assur. Co., U. S. C. C., N. D. Cal., 123 Fed. Rep. 820.

154. TRIAL—Where Stipulation Constitutes Waiver of Trial by Jury.—Stipulation held to constitute a waiver of a trial by jury, and not intended to put the trial court in error on the ground of a conflict in the evidence.—Nashville, C. & St. L. Ry. v. Cody, Ala., 34 So. Rep. 1003.

155. TRIAL—Sending Papers with Jury.—Where plaintiff's statement of claim is the basis of the court's instruction, it is not error to send it out with the jury when they retire.—Tridell v. Munhall, U. S. C. C., W. D. Pa., 123 Fed. Rep. 802.

156. TRUSTS—"Aliquot Part."—Though a resulting trust in favor of a contributor to the price of land will not be enforced, unless he contracted for a aliquot part thereof, such part held to mean only a particular fraction of the whole.—Skehill v. Abbott, Mass., 68 N. E. Rep. 37.

157. TRUSTS—Death of Beneficiaries.—A will creating a trust construed, and held, that on the death of each life tenant his share of the fund should be distributed among the other beneficiaries and the issue of such life tenant *per stirpes*.—Brown v. Farmer, Mass., 68 N. E. Rep. 32.

158. USURY—Defense to Mortgage Debt.—Usury is of no avail as a defense to the purchaser of the equity of redemption who has assumed the mortgage debt.—People's Building, Loan & Savings Ass'n v. Pickard, Neb., 96 N. W. Rep. 387.

159. USURY—Exacting Interest by Way of Discount.—If it is lawful to exact the payment of 8 per cent. in advance by way of discount for a loan for five years, where the borrower contracted to pay $3.48 more than such interest, the contract was usurious.—Howell v. Pennington, Ga., 45 S. E. Rep. 272.

160. VENDOR AND PURCHASER—Constructive Purchaser.—The possession of the tenant is sufficient to put an intending purchaser from a third person upon inquiry as to the landlord's rights.—Randall v. Lingwall, Oreg., 73 Pac. Rep. 1.

161. VENDOR AND PURCHASER—Notice.—Actual notice of facts which if pursued would have led to knowledge of an unrecorded transfer of real estate held equivalent to actual notice.—Rankin Mfg. Co. v. Bishop, Ala., 34 So. Rep. 991.

162. VENDOR AND PURCHASER—Possession of Property.—Possession of property by obligee in bond conveyance thereof held notice of her rights to those claiming under an unauthorized assignment of the bond by obligee's husband.—Hawley v. Hawley, Oreg., 73 Pac. Rep. 3.

163. VENDOR AND PURCHASER—Quitclaim Deed.—Where an owner of land contracted to convey by a quitclaim deed, and the contract was recorded, and thereafter the vendor conveyed the property to another, such grantee took the property subject to the original contract.—Meyers v. Markham, Minn., 96 N. W. Rep. 835.

164. WATERS AND WATER COURSES—Diversion.—Lapse of time will not bar the owner of land from his right to have a stream flow through the same in its natural bed or channel.—Leonard v. St. John, Va., 45 S. E. Rep. 474.

165. WATERS AND WATER COURSES—Surface Water.—Flood water of a river overflowing its banks, which will return to the river, though spread over the adjacent lands, is not surface water.—Jones v. Seaboard Air Line Ry. Co., S. Car., 45 S. E. Rep. 188.

166. WILLS—Ademption.—Parol evidence held inadmissible to show that testator did not intend ademption of a specific legacy of certain claims which he collected in his lifetime.—Rogers v. Rogers, S. Car., 45 S. E. Rep. 176.

167. WILLS—Construction.—Where the residue of testator's estate was devised to the residuary legatee in fee, such estate was not affected by a subsequent codicil attempting to dispose of the remainder after the legatee's death.—Bassett v. Nickerson, Mass., 67 N. E. Rep. 25.

168. WILLS—Contract to Devise Property.—A contract by one to dispose of his property in a particular way by will may be enforced in equity, after his decease, against his heirs, devisees, or personal representatives.—Spencer v. Spencer, R. I., 55 Atl. Rep. 637.

169. WILLS—Deed.—An instrument conveying property *in præsenti*, with right of possession postponed until the grantor's death, is a deed, and not a will.—Watkins v. Nugen, Ga., 45 S. E. Rep. 262.

170. WILLS—Ejectment.—A devisee may prosecute ejectment for the lands devised during the pendency of probate proceedings.—Beer v. Plant, Neb., 96 N. W. Rep. 348.

171. WILLS—Harmless Error.—Refusal of the trial court to compel the state's attorney to deliver certain letters to defendant's counsel during his cross-examination of prosecutor held not error.—State v. Donovan, Vt., 55 Atl. Rep. 611.

172. WITNESSES—Mental Capacity.—In an action by an administrator, defendants, if otherwise qualified, may testify as to the mental capacity of the deceased when the contract was made.—Grimshaw v. Kent, Kan., 73 Pac. Rep. 93.

INDEX-DIGEST

TO THE EDITORIALS, NOTES OF RECENT DECISIONS, LEADING ARTICLES, ANNOTATED CASES, LEGAL NEWS, CORRESPONDENCE AND BOOK REVIEWS IN VOLUME 57.

A separate subject-index for the "Digest of Current Opinions" will be found on page 508, following this Index-Digest.

SUBJECT-INDEX

TO ALL THE "DIGESTS OF CURRENT OPINIONS" IN VOL. 57.

This subject-index contains a reference *under its appropriate head* to every digest of current opinions which has appeared in the volume. The references, of course, are to the pages upon which the digest may be found. There are no cross-references, but each digest is indexed herein under that head, for which it would most naturally occur to a searcher to look. It will be understood that the page to which reference, by number, is made, may contain more than one case on the subject under examination, and therefore the entire page in each instance will necessarily have to be scanned in order to make effective and thorough search.